Consolidated Customs Statutes and Regulations 1995



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INTRODUCTION

The Consolidated Customs Statutes and Regulations 1995 is the first edition of what is hoped will be an annual publication containing those statutes and regulations most relevant to the practice and study of customs and excise law in Canada, which includes the goods and services tax. For those interested in this specific tax, it can be found in Part IX (Sections 122-347) of the Excise Tax Act.

To assist in research, a topical index referring to section numbers of the statutes and regulations has been included.

All statutes are current to August 31, 1994, while all regulations are current to August 24, 1994.

It is hoped that the *Consolidated Customs Statutes and Regulations 1995* will prove to be a helpful and useful desktop reference for all those who practice, study, or otherwise have an interest in or a need to know about this area of law.

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SHORT TITLE

1. [Short title].—This Act may be cited as the Customs Act.

INTERPRETATION

- 2. (1) **Definitions.**—In this Act,
- "bonded warehouse".—"bonded warehouse" means a place licensed as a bonded warehouse by the Minister under section 24;
- "Canada".—"Canada" includes the land mass of Canada, the internal waters and the territorial sea;
- "Canada-United States Free Trade Agreement".—"Canada-United States Free Trade Agreement" has the meaning given to the term "Agreement" by the Canada-United States Free Trade Agreement Implementation Act;
- "Certificate of Origin".—"Certificate of Origin" means the proof of origin form for goods for which preferential tariff treatment under NAFTA is claimed, prescribed under subsection 35.1(1) and subject to the regulations made pursuant to paragraph 35.1(4)(b);
- "cigar".—"cigar" has the meaning assigned by section 6 of the Excise Act;
- "conveyance".—"conveyance" means any vehicle, aircraft or water-borne craft or any other contrivance that is used to move persons or goods;
- "courier".—"courier" has the meaning assigned by regulation;
- "customs office".—"customs office" means a place designated as a customs office by the Minister under section 5;
- "Deputy Minister".—"Deputy Minister" means the Deputy Minister of National Revenue:

^{*}The various coming-into-force provisions and provisions re the application of S.C. 1992, c. 28 are quite complex. Reference should be made to the various provisions throughout S.C. 1992, c. 28 re application and, in particular, those sections that are in force on or after July 1, 1992 with respect to goods released under Part II of the *Customs Act*. See SI/92-127 and SI/92-223.

^{**}Section 92(1) of S.C. 1993, c. 25, provides that ss. 68-72 and 76 were deemed to have come into force on February 13, 1992.

- "duties".—"duties" means any duties or taxes levied on imported goods under the *Customs Tariff*, the *Excise Tax Act*, the *Excise Act*, the *Special Import Measures Act* or any other law relating to customs, but, for the purposes of subsection 3(1), paragraphs 58(2)(b), 62(1)(b) and 65(1)(b), sections 69 and 73 and subsections 74(1), 75(2), 76(1) and 82(1), does not include taxes levied under Part IX of the *Excise Tax Act* [amended by 1993, c. 27, s. 213(1), deemed to come into force January 1, 1991 by 1993, c. 27, s. 213(2)];
- "duty free shop".—"duty free shop" means a place licensed as a duty free shop by the Minister under section 24;
- "export".—"export" means export from Canada;
- "forfeit".—"forfeit" means forfeit to Her Majesty in right of Canada;
- "goods".—"goods", for greater certainty, includes conveyances and animals;
- "import".—"import" means import into Canada;
- "inland waters".—"inland waters" means all the rivers, lakes and other fresh waters in Canada and includes the St. Lawrence River as far seaward as the straight lines drawn
 - (a) from Cap-des-Rosiers to the westernmost point of Anticosti Island, and
 - (b) from Anticosti Island to the north shore of the St. Lawrence River along the meridian of longitude sixty-three degrees west;
- "internal waters".—"internal waters" includes
 - (a) any areas of the sea that are on the landward side of the baselines of the territorial sea and any areas of the sea, other than the territorial sea, in respect of which Canada has a historic or other title of sovereignty, and
 - (b) the inland waters:
- "mail".—"mail" has the meaning set out in section 2 of the Canada Post Corporation Act;
- "manufactured tobacco".— "manufactured tobacco" has the meaning assigned by section 6 of the Excise Act;
- "Minister".—"Minister" means the Minister of National Revenue;
- "NAFTA".—"NAFTA" has the meaning assigned to the word "Agreement" by subsection 2(1) of the North American Free Trade Agreement Implementation Act;
- "NAFTA country".—"NAFTA country" has the meaning assigned to that expression by subsection 2(1) of the North American Free Trade Agreement Implementation Act;
- "officer".—"officer" means a person employed in the administration or enforcement of this Act or the *Special Import Measures Act* and includes any member of the Royal Canadian Mounted Police;
- "person".—"person", unless the context otherwise requires, includes a corporation, a partnership and an association;
- "preferential tariff treatment under NAFTA".—"preferential tariff treatment under NAFTA" means, in respect of goods, entitlement to the benefit of the United States Tariff, the Mexico Tariff or the Mexico-United States Tariff of Schedules I and II to the Customs Tariff;
- "prescribed".—"prescribed" means
 - (a) in the case of a form, the information to be given on a form or the manner of filing a form, authorized by the Minister, and

- (b) in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation;
- "regulation".—"regulation" means a regulation made by the Governor in Council under this Act;
- "release".—"release" means, in respect of goods, to authorize the removal of the goods from a customs office, sufferance warehouse, bonded warehouse or duty free shop for use in Canada;
- "specified rate".—"specified rate" means the rate of interest, expressed as a percentage per year, equal to 6% per year plus the prescribed rate;
- "sufferance warehouse".—"sufferance warehouse" means a place licensed as a sufferance warehouse by the Minister under section 24;
- "tariff classification".—"tariff classification" means the classification of imported goods under a tariff item in Schedule I to the *Customs Tariff* and, where applicable, under a code in Schedule II or VII to that Act or under any order made pursuant to section 62 or 68 of that Act;
- "territorial sea".—"territorial sea" means the territorial sea of Canada as determined in accordance with the *Territorial Sea and Fishing Zones Act*;
- "tobacco product".—"tobacco product" means manufactured tobacco or cigars;
- "United States".—"United States" means
 - (a) the customs territory of the United States, including the fifty states of the United States, the District of Columbia and Puerto Rico,
 - (b) the foreign trade zones located in the United States and Puerto Rico, and
 - (c) any areas beyond the territorial sea of the United States within which, in accordance with international law and its domestic laws, the United States may exercise rights with respect to the seabed and subsoil and the natural resources thereof;
- "value for duty".—"value for duty" means, in respect of goods, the value of the goods as it would be determined in accordance with sections 45 to 56.
- (2) **Restriction of territorial sea or internal waters.**—The Governor in Council may from time to time by proclamation temporarily restrict, for the purposes of this Act, the extent of the territorial sea or the internal waters, and such proclamation shall not be construed as foregoing any Canadian rights in respect of waters so restricted.
- (3) Powers, duties and functions of Deputy Minister.—Any power, duty or function of the Deputy Minister under this Act may be exercised or performed by any person authorized by the Deputy Minister to do so and, if so exercised or performed, shall be deemed to have been exercised or performed by the Deputy Minister. R.S.C. 1985, c. 41 (3rd Supp.), s. 118; S.C. 1988, c. 65, s. 66; S.C. 1990, c. 45, s. 19; S.C. 1992, c. 28, s. 1; S.C. 1993, c. 25, s. 68; S.C. 1993, c. 27, s. 213; S.C. 1993, c. 44, s. 81; S.C. 1994, c. 13, s. 7(1)(d).

PART I

GENERAL

Application to Her Majesty

3. (1) **Duties binding on Her Majesty.**—All duties or taxes levied on imported goods under the *Customs Tariff*, the *Excise Tax Act*, the *Excise Act*, the *Special Import Measures Act*

or any other law relating to customs are binding on Her Majesty in right of Canada or a province in respect of any goods imported by or on behalf of Her Majesty.

- (2) Act binding on Her Majesty.—Subject to subsection (3), this Act is binding on Her Majesty in right of Canada or a province.
- (3) Exemption.—The Governor in Council may by regulation exempt Her Majesty in any case or class of cases from the requirement to report under section 12 or 95 subject to such conditions as may be prescribed.
- 3.1 Interest and penalty to be compounded.—Interest computed at a prescribed rate or at a specified rate and any penalty computed at a rate per year under any provision of this Act (other than in respect of any amount in respect of duty levied under the *Special Import Measures Act*) shall be compounded daily and, where interest or such a penalty is computed in respect of an amount under a provision of this Act and is unpaid on the day it would, but for this section, have ceased to be computed under that provision, interest at the specified rate shall be computed and compounded daily on that unpaid interest or penalty from that day to the day it is paid and shall be paid as that provision required the amount to be paid. S.C. 1992, c. 28, s. 2.
- 3.2 Prescribed rate may be authorized.—Where a person is required under a provision of this Act to pay interest on an amount at the specified rate, the person shall, where the Minister or any officer designated by the Minister for the purposes of this section so authorizes, pay interest on that amount under that provision at the prescribed rate rather than at the specified rate. S.C. 1992, c. 28, s. 2.
- 3.3 (1) Waiver of penalty or interest.—The Minister or any officer designated by the Minister for the purposes of this section may at any time waive or cancel all or any portion of any penalty or interest otherwise payable by a person under this Act.
- (2) Interest on penalty or interest refunded.—Where, as a result of a waiver or cancellation under subsection F(1), a person is given a refund of an amount of penalty or interest that was paid by the person, the person shall be given, in addition to the refund, interest at the prescribed rate for the period beginning on the first day after the day the amount was paid and ending on the day the refund is given, calculated on the amount of the refund. S.C. 1992, c. 28, s. 2.

Security

- 3.4 (1) Additional security.—Where security has been given to the Minister by a person under a provision of this Act and the Minister or any officer (in this section referred to as a "designated officer") designated by the Minister for the purposes of this section determines that the security that has been given is no longer adequate, the Minister or a designated officer may, by notice served personally or by registered or certified mail, require additional security to be given by or on behalf of the person within such reasonable time as may be stipulated in the notice.
- (2) Payment where additional security not given.—Where the additional security required to be given by or on behalf of a person under subsection (1) is not given within the time it is so required to be given, the amount by which
 - (a) the amount owing in respect of which security that has been given to the Minister by the person is no longer adequate

exceeds

(b) the value of the security that has been given to the Minister by the person, as determined by the Minister or a designated officer,

is payable by the person immediately. S.C. 1992, c. 28, s. 2.

Performance of Obligations

4. Performance of obligations.—Where more than one person is responsible for the performance of any obligation under this Act, performance of the obligation by any one of them shall be deemed to be performance by all of them.

Customs Offices and Facilities

- **5. Customs offices.**—The Minister may designate customs offices inside or outside Canada for a specified purpose or generally for business relating to customs and may at any time amend, cancel or reinstate any such designation.
 - **6.** (1) Customs facilities.—The owner or operator of
 - (a) any international bridge or tunnel, for the use of which a toll or other charge is payable.
 - (b) any railway operating internationally, or
 - (c) any airport, wharf or dock that receives conveyances operating internationally and in respect of which a customs office has been designated under section 5

shall provide, equip and maintain free of charge to Her Majesty at or near the bridge, tunnel, railway, airport, wharf or dock adequate buildings, accommodation or other facilities for the proper detention and examination of imported goods or for the proper search of persons by customs officers.

- (2) Rights of Minister.—The Minister may
- (a) make such improvements as the Minister considers desirable to any facilities provided pursuant to subsection (1),
- (b) post, on or about such facilities, such signs as the Minister considers appropriate for the safe use of the facilities or for the enforcement of any law relating to the importation or exportation of goods or the international movement of persons, and
- (c) continue to use such facilities for as long a period of time as the Minister requires, and no person shall interfere with any of the rights set out in this subsection.
- (3) **Regulations.**—The Governor in Council may, subject to subsection (4), make regulations determining what are adequate buildings, accommodation and other facilities for the purposes referred to in subsection (1).
- (4) Canada Labour Code.—Any building, accommodation or other facility provided for the purposes referred to in subsection (1) that fails to meet the applicable requirements of Part II of the Canada Labour Code shall be deemed not to be adequate for those purposes.
- (5) **Powers of Minister.**—Where any building, accommodation or other facility provided pursuant to subsection (1) at or near an international bridge or tunnel is not adequate for the purposes referred to in that subsection, the Minister may, on thirty days notice to the owner or operator of the bridge or tunnel, carry out any construction or repairs on the site of the facility in order to render it adequate for those purposes.
- (6) Liability for costs.—The owner or operator of an international bridge or tunnel is liable for all reasonable costs incurred by the Minister under subsection (5), which costs may be recovered in accordance with sections 143 to 145. R.S.C. 1985, c. 26 (3rd Supp.), s. 1.

Application of Act

7. Application inside and outside Canada.—Subject to this Act and the regulations, any of the powers, duties or functions established under this Act or the regulations relating to the importation of goods may be carried out inside Canada or, where they do not conflict with the laws of another country, inside that other country and may be carried out before or after the importation.

Forms

8. Forms.—The Minister may prescribe any form or any information to be given on a form that is by this Act or the regulations to be prescribed and may include on any form so prescribed a declaration, to be signed by the person completing the form, declaring that the information given by that person on the form is true, accurate and complete.

Brokers and Agents

- **9.** (1) **Issue of customs broker's licence.**—Subject to the regulations, the Minister or any person designated by the Minister for the purposes of this section may issue to any person who is qualified under the regulations a licence to transact business as a customs broker.
- (2) Amendment, etc., of licence.—Subject to the regulations, the Minister may amend, suspend, renew, cancel or reinstate any licence issued under subsection (1), and any person designated by the Minister for the purpose of this section may amend, suspend, renew, cancel or reinstate any licence issued by himself under subsection (1).
- (3) **Records.**—Where an officer so requests, a customs broker shall make available to the officer any records that he is required by the regulations to keep.
- (4) **Prohibition.**—No person shall transact or attempt to transact business as a customs broker or hold himself out as a customs broker unless the person holds a licence issued under subsection (1) or unless he is qualified under the regulations and is duly authorized to transact business as a customs broker by a person who holds such a licence, but nothing in this subsection shall be so construed as to prohibit any person from transacting business on his own behalf under this Act, or to prohibit persons administering estates or other duly authorized agents from transacting business under this Act.
 - (5) Regulations.—The Governor in Council may make regulations
 - (a) prescribing qualifications as to citizenship, residence and knowledge of the laws and procedures relating to importations and exportations and any other qualifications that must be met by an applicant for a customs broker's licence issued under subsection (1), and any such qualifications that must be met by a person who transacts business as a customs broker on behalf of a person so licensed;
 - (b) prescribing the terms and conditions on which such licences may be issued, including the security that may be required and the fees, if any, to be paid for the licences;
 - (c) prescribing the duration of such licences;
 - (d) prescribing the manner of applying for such licences or for renewals thereof;
 - (e) providing for the examination of applicants for such licences, and of persons who will transact business as customs brokers on their behalf, by the Minister or by any other person with respect to their knowledge of the laws and procedures relating to importations and exportations;
 - (f) prescribing the examination fees to be paid, the amount of any deposit that may be

taken in respect thereof and the conditions under which such fees or deposits may be refunded:

- (g) prescribing the records to be kept by customs brokers and the period of time for which they shall be kept; and
- (h) prescribing the manner and circumstances in which the Minister may suspend or cancel a customs broker's licence issued under subsection (1) or any other person may suspend or cancel such a licence issued by himself thereunder, and the circumstances in which a customs broker's licence shall be surrendered.
- 10. (1) Agents.—Subject to the regulations, any person who is duly authorized to do so may transact business under this Act as the agent of another person, but an officer may refuse to transact business with any such person unless that person, on the request of the officer, produces a written authority, in a form approved by the Minister, from the person on whose behalf he is acting.
- (2) **Administrators.**—Any person who is duly authorized to administer the estate of another person by reason of death, bankruptcy, insolvency or incapacity or for any other reason may transact business under this Act on behalf of the estate but an officer may refuse to transact business with any such person unless that person satisfies the officer that he is duly authorized to administer the estate.
- (3) **Regulations.**—The Governor in Council may make regulations in respect of any provision of this Act prescribing the circumstances in which a person may transact business under that provision as the agent of another person.

PART II

IMPORTATION

Persons

- 11. (1) Presentation of persons on arrival in Canada.—Subject to this section, every person arriving in Canada shall, except in such circumstances and subject to such conditions as may be prescribed, forthwith present himself at the nearest customs office designated for that purpose that is open for business and answer truthfully any questions asked by an officer in the performance of his duties under this or any other Act of Parliament.
- (2) **Exception.**—Subsection (1) does not apply to any person who has presented himself outside Canada at a customs office designated for that purpose and has not subsequently stopped at any other place prior to his arrival in Canada unless an officer requires that person to comply therewith.
- (3) **Presentation of passengers and crew.**—Subject to this section, every person in charge of a conveyance arriving in Canada shall, except in such circumstances and subject to such conditions as may be prescribed, ensure that the passengers and crew are forthwith on arrival in Canada transported to a customs office referred to in subsection (1).
- (4) **Exception.**—Subsection (3) does not apply to any person in charge of a conveyance transporting passengers and crew all of whom have presented themselves outside Canada at a customs office designated for that purpose and have not subsequently stopped at any other place prior to their arrival in Canada unless an officer requires that person to comply therewith.
- (5) **Exception.**—Subsections (1) and (3) do not apply to any person who enters the internal waters, the territorial sea or the airspace over Canada while he is proceeding directly

from one place outside Canada to another place outside Canada unless an officer requires that person to comply therewith.

Report of Goods

- 12. (1) Report.—Subject to this section, all goods that are imported shall, except in such circumstances and subject to such conditions as may be prescribed, be reported at the nearest customs office designated for that purpose that is open for business.
- (2) **Time and manner of report.**—Goods shall be reported under subsection (1) at such time and in such manner as the Governor in Council may prescribe.
 - (3) Who reports.—Goods shall be reported under subsection (1)
 - (a) in the case of goods in the actual possession of a person arriving in Canada, or that form part of his baggage where the person and his baggage are being carried on board the same conveyance, by that person;
 - (a.1) in the case of goods imported by courier or as mail, by the person who exported the goods to Canada;
 - (b) in the case of goods, other than goods referred to in paragraph (a) or goods imported as mail, on board a conveyance arriving in Canada, by the person in charge of the conveyance; and
 - (c) in any other case, by the person on behalf of whom the goods are imported.
- (4) Where goods are reported outside Canada.—Subsection (1) does not apply in respect of goods that are reported in the manner prescribed under subsection (2) prior to importation at a customs office outside Canada unless an officer requires that the goods be reported again under subsection (1) after importation.
- (5) Exception.—This section does not apply in respect of goods on board a conveyance that enters the internal waters, the territorial sea or the airspace over Canada while it is proceeding directly from one place outside Canada to another place outside Canada unless an officer otherwise requires.
- (6) Written report.—Where goods are required by the regulations to be reported under subsection (1) in writing, they shall be reported in the prescribed form containing the prescribed information, or in such form containing such information as is satisfactory to the Minister.
- (7) Certain goods not subject to seizure.—Goods described in tariff item No. 9813.00.00 or 9814.00.00 of Schedule I to the *Customs Tariff*
 - (a) that are in the actual possession of a person arriving in Canada, or that form part of his baggage, where the person and his baggage are being carried on board the same conveyance,
 - (b) that are not charged with duties, and
 - (c) the importation of which is not prohibited under the *Customs Tariff* or prohibited, controlled or regulated under any Act of Parliament other than this Act or the *Customs Tariff*

may not be seized as forfeit under this Act by reason only that they were not reported under this section. R.S.C. 1985, c. 41 (3rd Supp.), s. 119; S.C. 1992, c. 28, s. 3.

13. Obligation to answer questions and present goods.—Every person reporting goods under section 12 inside or outside Canada shall

- (a) answer truthfully any question asked by an officer with respect to the goods; and
- (b) where an officer so requests, present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part thereof, or open or unpack any package or container that the officer wishes to examine.
- 14. (1) Restriction on unloading before report.—No person shall unload goods from a conveyance arriving in Canada until the goods have been reported in accordance with sections 12 and 13 except where the safety of the conveyance, or the goods or persons on the conveyance, is threatened by collision, fire, the stress of weather or other similar circumstances or in such other circumstances as may be prescribed.
- (2) **Report of goods unloaded.**—Where a conveyance is unloaded in the circumstances described in subsection (1), the person in charge of the conveyance shall forthwith, in such manner as may be prescribed, report the conveyance, the goods that were so unloaded and any goods that remain on the conveyance at a customs office designated for that purpose.
- 15. Report of goods illegally imported.—Any person who finds or has in his possession goods that have been imported and who believes on reasonable grounds that the provisions of this or any other Act of Parliament that prohibits, controls or regulates the importation of goods have not been complied with in respect of the goods or that duties levied thereon have not been paid shall forthwith report to an officer that he has found the goods or has them in his possession.
- **16.** (1) **Wreck deemed imported.**—For the purposes of this Act, any wreck that has come into Canada from outside Canada shall be deemed to have been imported.
- (2) **Report of wreck and liability for duties.**—Where any wreck that has come into Canada from outside Canada is delivered up to the owner thereof or his agent pursuant to section 441 of the *Canada Shipping Act*, the owner of the wreck
 - (a) shall forthwith report the delivery to an officer; and
 - (b) is, from the time of the delivery, liable for all duties thereon calculated at the rates applicable to the wreck at the time of the delivery.
 - (3) **Definition of "wreck".**—In this section, "wreck" includes
 - (a) jetsam, flotsam, lagan and derelict found in, or on the shores of, the sea, any tidal water, or any of the inland waters;
 - (b) cargo, stores and tackle of any vessel and of all parts of the vessel separated therefrom;
 - (c) the property of shipwrecked persons; and
 - (d) any wrecked aircraft or any part thereof and cargo thereof.

Duties

- 17. (1) Goods charged with duties from importation.—Imported goods are charged with duties thereon from the time of importation thereof until such time as the duties are paid or the charge is otherwise removed.
- (2) **Rates of duties.**—Subject to this Act, the rates of duties on imported goods shall be the rates applicable to the goods at the time they are accounted for under subsection 32(1), (2) or (5).
- (3) **Joint and several liability.**—Whenever the importer of goods that have been released or any person authorized pursuant to paragraph 32(6)(a) or subsection 32(7) to account for goods becomes liable under this Act to pay duties thereon, the owner of the goods at the time of

release becomes jointly and severally liable, with the importer or person authorized, to pay the duties. S.C. 1992, c. 28, s. 4.

Liability for Duties on Goods Reported

- 18. (1) Presumption of importation.—For the purposes of this section, all goods reported under section 12 shall be deemed to have been imported.
- (2) Liability of person reporting goods short landed.—Subject to subsection (3), any person who reports goods under section 12, and any person for whom that person acts as agent or employee while so reporting, are jointly and severally liable for all duties levied on the goods unless one or the other of them proves, within such time as may be prescribed, that the duties have been paid or that the goods
 - (a) were destroyed or lost prior to report or destroyed after report but prior to receipt in a place referred to in paragraph (c) or by a person referred to in paragraph (d);
 - (b) did not leave the place outside Canada from which they were to have been exported;
 - (c) have been received in a customs office, sufferance warehouse, bonded warehouse or duty free shop;
 - (d) have been received by a person who transports or causes to be transported within Canada goods in accordance with subsection 20(1);
 - (e) have been exported; or
 - (f) have been released.
- (3) **Rates of duties.**—The rates of duties payable on goods under subsection (2) shall be the rates applicable to the goods at the time they were reported under section 12.
- (4) **Regulations.**—The Governor in Council may make regulations prescribing the circumstances in which such bonds or other security as may be prescribed may be required from any person who is or may become liable for the payment of duties under this section.

Movement and Storage of Goods

- 19. (1) Disposition of goods before release.—Subject to section 20, any person who is authorized by an officer to do so may
 - (a) deliver goods that have been reported under section 12 or cause them to be delivered from a customs office to another customs office or a sufferance warehouse;
 - (b) deliver such goods or cause them to be delivered from a sufferance warehouse to another sufferance warehouse;
 - (c) where such goods are designated as ships' stores in regulations made under paragraph 164(1)(c), remove them or cause them to be removed from a customs office or sufferance warehouse for use on board a conveyance within a class of conveyances prescribed under that paragraph in accordance with regulations made under that paragraph;
 - (d) export such goods or cause them to be exported directly from a customs office or sufferance warehouse; or
 - (e) where such goods are at a customs office, leave them at that office, subject to such storage charges as may be prescribed.
- (2) **Idem.**—Subject to section 20, where goods that have been reported under section 12 have been accounted for in the prescribed form containing the prescribed information at a

customs office designated for that purpose, any person who is authorized by an officer to do so may

- (a) deliver the goods or cause them to be delivered from a customs office or sufferance warehouse to a bonded warehouse or duty free shop;
- (b) deliver them or cause them to be delivered from a bonded warehouse to another bonded warehouse or to a duty free shop or from a duty free shop to another duty free shop or to a bonded warehouse;
- (c) where the goods are designated as ships' stores in regulations made under paragraph 164(1)(c), remove them or cause them to be removed from a bonded warehouse for use on board a conveyance within a class of conveyances prescribed under that paragraph in accordance with regulations made under that paragraph; or
- (d) export them or cause them to be exported directly from a bonded warehouse or a duty free shop, in accordance with regulations made under section 30.
- (3) **Duties removed.**—Subject to subsection (4), goods that are removed as ships' stores under paragraph (1)(c) or (2)(c) or exported under paragraph (1)(d) or (2)(d) are, from the time of the removal or exportation, no longer charged with duties.
- (4) **Duties on tobacco products not removed.**—Subsection (3) does not apply in respect of
 - (a) the taxes and duties levied under the Excise Tax Act and section 20 of the Customs Tariff on cigars and manufactured tobacco that are delivered to a bonded warehouse after February 12, 1992 and are exported from the bonded warehouse after that date and before April 8, 1992; and
 - (b) the tax levied under section 23.2 of the Excise Tax Act on tobacco products that are delivered o a duty free shop during an application period.
- (5) **Definitions.**—In subsection (4), "tobacco product" and "application period" have the meanings assigned by section 23.1 of the *Excise Tax Act*. S.C. 1993, c. 25, s. 69.
- **19.1** (1) **Statistics.**—Subject to this section, any person who is authorized by an officer under subsection 19(2) to deliver goods or cause them to be delivered to a bonded warehouse shall, before the delivery, furnish an officer at a customs office with the statistical code for the goods determined by reference to the Coding System established pursuant to section 22.1 of the *Statistics Act*.
- (2) **Prescribed form.**—The statistical code referred to in subsection (1) shall be furnished in the prescribed manner and in the prescribed form containing the prescribed information.
- (3) **Regulations.**—The Governor in Council may make regulations exempting persons or goods, or classes thereof, from the requirements of subsection (1) subject to such conditions, if any, as are specified in the regulations. S.C. 1988, c. 65, s. 67.

Transportation

- **20.** (1) **Transportation of goods.**—Except in such circumstances as may be prescribed, every person who transports or causes to be transported within Canada goods that have been imported but have not been released shall do so subject to such conditions and subject to such bonds or other security as may be prescribed.
 - (2) Liability of transporter. —Every person who transports or causes to be transported

within Canada goods that have been imported but have not been released is liable for all duties thereon unless he proves, within such time as may be prescribed, that the goods were

- (a) destroyed while being so transported;
- (b) received in a customs office, sufferance warehouse, bonded warehouse or duty free shop;
- (c) where the goods are designated as ships' stores in regulations made under paragraph 164(1)(c), received on board a conveyance within a class of conveyances prescribed under that paragraph for use thereon in accordance with regulations made under that paragraph;
- (d) received by another person who is entitled under subsection (1) to transport such goods; or
- (e) exported.
- (3) Rates of duties.—The rates of duties payable on goods under subsection (2) shall be the rates applicable to the goods at the time they were reported under section 12.
- 21. Officer's access to goods.—Every person who transports or causes to be transported within Canada goods that have been imported but have not been released shall, where an officer so requests, afford the officer free access to any premises or place under his control that is attached to or forms part of any place where such goods are reported, loaded, unloaded or stored, and open any package or container of such goods or remove any covering therefrom.
 - 22. (1) Records.—Subject to subsection (2), every person who
 - (a) transports or causes to be transported goods into Canada, or
 - (b) transports or causes to be transported within Canada goods that have been imported but have not been released

shall keep in Canada such records for such period of time as may be prescribed and shall, where an officer so requests, make them available to the officer.

- (2) **Exemption.**—The Minister may, subject to such terms and conditions as he may specify, exempt any person or class of persons from the requirement to keep records or from the requirement to keep records in Canada where he deems it unnecessary or impracticable to keep records or to keep them in Canada.
- 23. Transportation over territory outside Canada.—Goods that are transported from one place in Canada to another place in Canada over territory or waters outside Canada in accordance with such terms and conditions and subject to such bonds or other security as may be prescribed shall be treated, with respect to their liability to or exemption from duties, as if they had been transported entirely within Canada.

Warehouses and Duty Free Shops

- **24.** (1) Licences.—Subject to the regulations, the Minister may, where he deems it necessary or desirable to do so, issue to any person qualified under the regulations a licence for the operation of any place
 - (a) as a sufferance warehouse for the examination of imported goods that have not been released,
 - (b) as a bonded warehouse for the storage of goods that have not been released or are destined for exportation, or
 - (c) as a duty free shop for the sale of goods free of duties or taxes levied on goods under

the *Customs Tariff*, the *Excise Tax Act* (other than section 23.2 of that Act), the *Excise Act*, the *Special Import Measures Act* or any other law relating to customs, to persons who are about to leave Canada

and may specify in the licence any restriction as to the classes of goods that may be received therein or the circumstances in which goods may be received therein.

- (1.1) **Definition of "duties" not to apply.**—The definition "duties" in subsection 2(1) does not apply for the purposes of paragraph (1)(c).
- (2) **Amendment of licence.**—The Minister may, subject to the regulations, amend, suspend, renew, cancel or reinstate a licence issued under subsection (1). S.C. 1993, c. 25, s. 70.
- **25. Sufferance warehouse operator's obligation.**—Subject to the regulations, the operator of a sufferance warehouse shall not refuse to receive any goods brought to the warehouse that qualify under the terms of his licence.
- **26.** (1) **Price of goods sold in duty free shop.**—The operator of a duty free shop shall ensure that the prices of goods offered for sale at the duty free shop reflect the extent to which the goods have not been subject to duties and taxes.
- (2) **Definition.**—In subsection (1), "duties" means duties or taxes levied under the *Customs Tariff*, the *Excise Tax Act*, the *Excise Act*, the *Special Import Measures Act* or any other law relating to customs. S.C. 1993, c. 25, s. 71.
- 27. Officer's access to goods.—The operator of a sufferance warehouse, bonded warehouse or duty free shop shall, where an officer so requests, afford the officer free access to the warehouse or duty free shop or any premises or place under his control that is attached to or forms part of the warehouse or duty free shop and open any package or container of goods therein or remove any covering therefrom.
- **28.** (1) **Liability of operator.**—Subject to subsections (1.1) and (1.2), the operator of a sufferance warehouse, bonded warehouse or duty free shop is liable for all duties or taxes levied under the *Customs Tariff*, the *Excise Tax Act*, the *Excise Act*, the *Special Import Measures Act* or any other law relating to customs on goods that have been received therein unless the operator proves that the goods are still in the warehouse or duty free shop, have been destroyed while in the warehouse or duty free shop, have been removed therefrom pursuant to section 19 or have been released by an officer.
- (1.1) Liability where goods are tobacco products.—In applying subsection (1) to an operator of a bonded warehouse in respect of the taxes and duties levied under the Excise Tax Act and section 20 of the Customs Tariff on cigars and manufactured tobacco that are delivered to the bonded warehouse after February 12, 1992 and are exported from the bonded warehouse after that date and before April 8, 1992, the reference in subsection (1) to "section 19" shall be read as a reference to "paragraph 19(2)(b) or (c)".
- (1.2) **Where s.** (1) **not applicable.**—Subsection (1) does not apply in respect of the tax levied under section 23.2 of the *Excise Tax Act*.
 - (2) **Rates of duties.**—The rates of duties payable on goods under subsection (1) shall.
 - (a) where the goods have been received in a sufferance warehouse, be the rates applicable to such goods at the time they were reported under section 12; and
 - (b) where the goods have been received in a bonded warehouse or duty free shop, be the rates applicable to such goods at the time they were received therein.

- (3) **Definition of "duties" not to apply.**—The definition "duties" in subsection 2(1) does not apply for the purposes of subsections (1), (1.1) and (2). S.C. 1993, c. 25, s. 72.
- **29. Records.**—The operator of a sufferance warehouse, bonded warehouse or duty free shop shall keep in Canada any records that he is required by the regulations to keep and shall, where an officer so requests, make them available to the officer.
 - 30. Regulations.—The Governor in Council may make regulations
 - (a) prescribing qualifications as to citizenship and residence or any other qualifications that must be met by the operator of a sufferance warehouse, bonded warehouse or duty free shop;
 - (b) prescribing the terms and conditions on which licences for the operation of sufferance warehouses, bonded warehouses or duty free shops may be issued under section 24, including the security that may be required of operators thereof, the duration of such licences and the fees or the manner of determining fees, if any, to be paid for such licences;
 - (c) prescribing the circumstances in which licences for the operation of sufferance warehouses, bonded warehouses or duty free shops may be issued, amended, suspended, renewed, cancelled or reinstated;
 - (d) establishing standards for the operation of and the maintenance of the facilities of sufferance warehouses, bonded warehouses or duty free shops;
 - (e) prescribing the records to be kept by operators of sufferance warehouses, bonded warehouses or duty free shops and the period of time for which they shall be kept;
 - (f) prescribing the manner of acknowledging receipt of goods in sufferance warehouses, bonded warehouses or duty free shops;
 - (g) establishing the circumstances in which and the extent to which goods may be manipulated, unpacked, packed, altered or combined with other goods while in sufferance warehouses, bonded warehouses or duty free shops;
 - (h) prescribing facilities, equipment and personnel that must be provided at sufferance warehouses, bonded warehouses or duty free shops;
 - (i) prescribing the circumstances in which the operator of a sufferance warehouse may refuse goods that are brought to the warehouse for safe-keeping;
 - (j) regulating the transfer of ownership of goods in bonded warehouses or duty free shops;
 - (k) prescribing, with respect to goods, or classes of goods, that are offered for sale in a duty free shop, minimum proportions, by reference to quantity, value or other like standard, that must be of domestic origin;
 - (1) prescribing restrictions as to the classes of goods that may be received in sufferance warehouses or bonded warehouses;
 - (m) prescribing circumstances in which goods shall not be received in sufferance warehouses or bonded warehouses; and
 - (n) otherwise regulating the operation of sufferance warehouses or bonded warehouses. S.C. 1993, c. 25, s. 73.

Release

31. Release.—Subject to section 19, no goods shall be removed from a customs office, sufferance warehouse, bonded warehouse or duty free shop by any person other than an officer

in the performance of his duties under this or any other Act of Parliament unless the goods have been released by an officer.

Accounting and Payment of Duties

- **32.** (1) Accounting and payment of duties.—Subject to subsections (2) and (4) and any regulations made under subsection (6), and to sections 33 and 34, no goods shall be released until
 - (a) they have been accounted for by the importer or owner thereof in the prescribed manner and, where they are to be accounted for in writing, in the prescribed form containing the prescribed information; and
 - (b) all duties thereon have been paid.
- (2) **Release prior to accounting.**—In such circumstances as may be prescribed, goods may be released prior to the accounting required under subsection (1) if the importer or owner of the goods makes an interim accounting in the prescribed manner and in the prescribed form containing the prescribed information, or in such form containing such information as is satisfactory to the Minister.
- (3) Accounting after release.—Where goods are released under subsection (2), the person who made the interim accounting thereunder in respect of the goods shall, within the prescribed time, account for the goods in the manner described in paragraph (1)(a).
- (4) **Release of goods.**—In such circumstances, and under such conditions, as may be prescribed, goods imported by courier or as mail may be released prior to the accounting required under subsection (1) and prior to the payment of duties thereon.
- (5) Accounting and payment of duties.—Where goods are released under subsection (4),
 - (a) the person who is authorized under paragraph (6)(a) or subsection (7) to account for the goods shall, within the prescribed time, account for the goods in the manner described in paragraph (1)(a) and that person or the importer or owner of the goods shall, within the prescribed time, pay duties on the goods, or
 - (b) where there is no person authorized under paragraph (6)(a) or subsection (7) to account for the goods, the importer or owner of the goods shall, within the prescribed time, account for the goods in the manner described in paragraph (1)(a) and shall, within the prescribed time, pay duties on the goods.
- (5.1) **Deemed accounting.**—Except in prescribed circumstances, where the importer or owner of mail that has been released as mail under subsection (4) takes delivery of the mail, the mail shall be deemed to have been accounted for under subsection (5) at the time of its release.
 - (6) **Regulations.**—The Governor in Council may make regulations
 - (a) specifying persons or classes of persons who are authorized to account for goods under this section in lieu of the importer or owner thereof and prescribing the circumstances in which and the conditions under which such persons or classes of persons are so authorized; and
 - (b) prescribing the circumstances in which goods may be released without any requirement of accounting.
- (7) Authorization to account.—The Minister or an officer designated by the Minister for the purposes of this subsection may authorize any person not resident in Canada to account for

goods under this section, in such circumstances and under such conditions as may be prescribed, in lieu of the importer or owner thereof. S.C. 1992, c. 28, s. 5.

- **32.1** (1) **Statistics.**—Subject to this section, every person who accounts for goods under subsection 32(1), (3) or (5) shall, at the time of accounting, furnish an officer at a customs office with the statistical code for the goods determined by reference to the Coding System established pursuant to section 22.1 of the *Statistics Act*.
- (2) Prescribed form.—The statistical code referred to in subsection (1) shall be furnished in the prescribed manner and in the prescribed form containing the prescribed information.
- (3) **Regulations.**—The Governor in Council may make regulations exempting persons or goods, or classes thereof, from the requirements of subsection (1) subject to such conditions, if any, as are specified in the regulations. S.C. 1988, c. 65, s. 68.
- 32.2 (1) Correction to declaration of origin for goods imported from a NAFTA country.—An importer or owner of goods for which preferential tariff treatment under NAFTA has been claimed or any person authorized to account for those goods by regulations made pursuant to paragraph 32(6)(a) or under subsection 32(7) shall, within ninety days after the importer, owner or person has reason to believe that a declaration of origin for those goods made under this Act is incorrect,
 - (a) make a correction to the declaration of origin in the prescribed manner and in the prescribed form containing the prescribed information; and
 - (b) pay any amount owing as duties as a result of the correction to the declaration of origin and any interest owing or that may become owing on that amount.
- (2) Correction not an accounting.—A correction to a declaration of origin for goods made under this section is not part of an accounting for the goods under subsection 32(1), (3) or (5).
- (3) **Idem.**—For greater certainty, this section does not apply where a correction to a declaration of origin would result in a claim for a refund of duties. S.C. 1993, c. 44, s. 82.
- 33. Release prior to payment of duties.—In such circumstances as may be prescribed, goods may be released prior to the payment of duties thereon, and where goods are released under this section the person who accounted for the goods under subsection 32(2) or (3) shall pay the duties thereon within a prescribed time. S.C. 1992, c. 28, s. 6.
- 33.1 Penalty for failure to account.—Every person who fails to account for imported goods when and in the manner required under this Part or under the regulations made under this Act is liable to a penalty of \$100 for each failure to so account. S.C. 1992, c. 28, s. 7.
- 33.2 Notice requiring accounting.—The Minister or any officer designated by the Minister for the purposes of this section may, by notice served personally or by registered or certified mail, require any person to account, within such reasonable time as may be stipulated in the notice, in the manner described in paragraph 32(1)(a), for any goods as may be designated in the notice. S.C. 1992, c. 28, s. 7.
- 33.3 Failure to answer notice.—Every person who fails to comply with section 33.2 with respect to a notice served on the person under that section is liable, in addition to any other penalty provided for in this Part, to a penalty equal to the greater of
 - (a) \$250, and
 - (b) 5% of the amount of duties payable on the goods designated in the notice. S.C. 1992, c. 28, s. 7.

- **33.4** (1) **Interest.**—Subject to subsection (4), any person who is hable to pay an amount of duties in respect of imported goods (other than any amount in respect of duty levied under the *Special Import Measures Act*) shall pay, in addition to the amount, interest at the specified rate for the period beginning on the first day after the day the person became liable to pay the amount and ending on the day the amount has been paid in full, calculated on the outstanding balance of the amount.
- (2) When duties deemed payable.—For the purposes of subsection (1), any person who is liable to pay an amount in respect of goods as duties under paragraph 34(2)(b) shall be deemed to have become liable to pay the duties ninety days after the day duties became payable on the goods under subsection 34(2).
- (3) **Idem.**—For the purposes of subsection (1), any duties in respect of goods payable under paragraph 58(2)(a), 62(1)(a) or 65(1)(a) shall be deemed to have become payable on the day duties became payable in respect of the goods under this Part.
- (4) Interest-free period.—Where an amount of duties in respect of goods that is payable by a person under paragraph 58(2)(a), 62(1)(a) or 65(1)(a) in accordance with a determination, appraisal, re-determination or re-appraisal is paid by the person within thirty days after the day (in this subsection referred to as the "decision day") the determination, appraisal, re-determination or re-appraisal, as the case may be, is made, interest shall not be payable under subsection (1) on the amount for the period beginning on the day after the decision day and ending on the day the amount is paid.
- (5) Interest on penalties.—Where a person is liable to a penalty under section 33.1, 33.3 or 33.6, the person shall pay, in addition to the penalty, interest at the specified rate for the period beginning on the day after the day the person became liable to the penalty and ending on the day the penalty has been paid in full, calculated on the outstanding balance of the penalty.
- (6) **Interest on tax.**—Any person who is liable to pay tax under Division III of Part IX of the *Excise Tax Act* in respect of an amount of duty levied under subsection 11(1) or paragraph 60(a) of the *Special Import Measures Act* shall pay, in addition to that tax, interest at the prescribed rate in respect of each month or fraction of a month in the period beginning thirty days after the day the tax became payable and ending on the day the tax has been paid in full, calculated on the outstanding balance of the tax. S.C. 1992, c. 28, s. 7.
- **33.5** Notice requiring payment.—The Minister or any officer designated by the Minister for the purposes of this section may, by notice served personally or by registered or certified mail, require any person to pay any amount owing as duties, within such reasonable time as may be stipulated in the notice, on any goods as may be designated in the notice. S.C. 1992, c. 28, s. 7.
- **33.6 Failure to answer notice.**—Every person who fails to pay any amount in accordance with a notice served under section 33.5 is liable, in addition to any other penalty provided for in this Part, to a penalty equal to the greater of
 - (a) \$250, and
 - (b) 5% of the amount of duties payable on the goods designated in the notice. S.C. 1992, c. 28, s. 7.
- **33.7** (1) Extension of time.—The Minister or any officer designated by the Minister for the purposes of this section may at any time extend in writing the time prescribed by the regulations made under this Part for the accounting of goods or the payment of any amount owing as duties.

- (2) Effect of extension for accounting.—Where the time within which a person must account for goods is extended under subsection (1),
 - (a) the goods shall be accounted for within the time as so extended;
 - (b) if the person accounts for the goods within the time as so extended, no penalty shall be imposed pursuant to section 33.1 or 33.3; and
 - (c) if the person fails to account for the goods withini the time as so extended, the extension shall be deemed not to have been made.
- (3) **Effect of extension for payment.**—Where the time within which a person must pay any amount owing as duties is extended under subsection (1),
 - (a) that amount shall be paid within the time as so extended;
 - (b) if the person pays that amount within the time as so extended,
 - (i) subsection 33.4(1) shall apply in respect of that amount as if the time had not been so extended, but interest payable under that subsection in respect of that amount shall be computed at the prescribed rate rather than at the specified rate, and
 - (ii) section 33.6 shall not apply in respect of a failure to pay the amount; and
 - (c) if the person fails to pay the amount within the time as so extended, the extension shall be deemed not to have been made. S.C. 1992, c. 28, s. 7.
- **33.8** Certain duties not included.—For the purposes of sections 33.1 to 33.6, "duties" do not include any amount in respect of duty levied under the *Special Import Measures Act*. S.C. 1992, c. 28, s. 7.
- 34. (1) Where goods qualify for drawback.—Where the Minister is satisfied that a drawback might be granted in respect of goods under paragraph 82(1)(a), (b) or (c) if duties were paid thereon, such goods may be released without the payment of duties thereon and are, from the time of the release, no longer charged with duties.
- (2) Where conditions not complied with.—Where goods have been released under this section without the payment of duties thereon and any condition subject to which the goods were released is not complied with, the person who fails to comply with the condition
 - (a) shall, within thirty days after the time of the failure to comply, report the failure to an officer at a customs office; and
 - (b) is, from the time of the failure to comply, liable to pay an amount equal to the duties that would, but for subsection (1), have been payable on the goods.
- (2.1) **Penalty for failure to report.**—Any person who fails to report a failure as required by paragraph (2)(a) is liable to pay a penalty of 6% per year of an amount equal to the duties (other than any amount in respect of duty levied under the *Special Import Measures Act*) that would, but for subsection (1), be payable on the goods for the period beginning on the first day after the period within which the report was required by paragraph (2)(a) to be made and ending on the day the report is made.
- (3) **Interest.**—Any person who is liable to pay an amount under paragraph (2)(b) in respect of duty levied under the *Special Import Measures Act* shall pay, in addition to the amount, interest at the prescribed rate in respect of each month or fraction of a month in the period beginning on the ninety-first day after the day the amount became payable and ending on the day the amount has been paid in full, calculated on the outstanding balance of the amount. S.C. 1992, c. 1, s. 144; S.C. 1992, c. 28, s. 8.
 - 35. Security and conditions of release.—Except in such circumstances as may be

prescribed, no goods shall be released under subsection 32(2) or (4) or section 33 or 34 until such deposits, bonds or other security as may be prescribed is given, and any goods that are released thereunder shall be released subject to such terms and conditions as may be prescribed.

Marking of Goods

- **35.01 Requirement to comply with marking regulations.**—No person shall import goods that are required to be marked by any regulations made pursuant to section 63.1 of the *Customs Tariff* unless the goods are marked in accordance with those regulations. S.C. 1993, c. 44, s. 83.
- **35.02** (1) **Penalty for failure to comply.**—Every person who fails to comply with section 35.01 is liable to a penalty of \$250 for each failure to comply.
- (2) **Notice requiring marking or compliance.**—The Minister or any officer designated by the Minister for the purposes of this section may, by notice served personally or by registered mail, require any person
 - (a) to mark the imported goods with respect to which there has been a failure to comply with section 35.01 in accordance with the regulations made pursuant to section 63.1 of the *Customs Tariff* within such reasonable time as may be stipulated in the notice; or
 - (b) to comply with section 35.01 in respect of any goods designated in the notice that will subsequently be imported by the person.
- (3) **Penalty for failure to comply with notice.**—Every person who fails to comply with a notice served on the person under subsection (2) in respect of goods is liable, in addition to any penalty provided for under subsection (1), to a penalty of \$2000 or such lesser amount as the Minister may direct.
- (4) **Goods imported from a NAFTA country.**—Where a person imports goods of a prescribed class from a NAFTA country, that person is not liable to a penalty under this section unless
 - (a) the person has previously failed to comply with section 35.01 in respect of imported goods and has been given notice pursuant to subsection (2);
 - (b) the goods with respect to which there has been a failure to comply with section 35.01 or a notice given pursuant to subsection (2) have been released without being marked in the manner referred to in section 35.01; or
 - (c) the imported goods have been marked in a deceptive manner so as to mislead another person as to the country or geographic area of origin of the goods.
- (5) **Interest on penalty.**—Any person who is liable to pay a penalty under this section shall pay, in addition to the penalty, interest at the specified rate for the period beginning on the day after the day on which the person became liable to the penalty and ending on the day on which the penalty has been paid in full, calculated on the outstanding balance of the penalty. **S.C.** 1993, c. 44, s. 83.

Origin of Goods

35.1 (1) **Proof of origin.**—Subject to any regulations made under subsection (4), proof of origin, in the prescribed form containing the prescribed information and containing or accompanied by the information, statements or proof required by any regulations made under subsection (4), shall be furnished in respect of all goods that are imported.

- (2) When furnished.—Proof of origin of goods shall be furnished under subsection (1) to an officer at such time and place and in such manner as may be prescribed.
- (3) Who furnishes.—Subject to any regulations made under subsection (4), proof of origin of goods shall be furnished under subsection (1) by the importer or owner thereof.
- (4) **Regulations.**—The Governor in Council, on the recommendation of the Minister and the Minister of Finance, may make regulations
 - (a) specifying persons or classes of persons who are authorized to furnish proof of origin of goods under subsection (1) in lieu of the importer or owner thereof and prescribing the circumstances in which and the conditions, if any, under which such persons or classes of persons are so authorized;
 - (b) specifying information required to be contained in, or to accompany, the prescribed proof of origin form in addition to the prescribed information and specifying any statements or proof required to be contained therein or to accompany that form; and
 - (c) exempting persons or goods, or classes thereof, from the requirements of subsection
 - (1) subject to such conditions, if any, as are specified in the regulations.
- (5) Denial or withdrawal of preferential tariff treatment under NAFTA.—Preferential tariff treatment under NAFTA may be denied or withdrawn in respect of goods imported from a NAFTA country for which such treatment is claimed where the importer, owner or other person required to furnish proof of origin of the goods under this section fails to comply with any provision of this Act or the *Customs Tariff* concerning preferential tariff treatment under NAFTA in respect of the goods. S.C. 1988, c. 65, s. 69; S.C. 1992, c. 28, s. 9; S.C. 1993, c. 44, s. 84.

Abandoned Goods

- **36.** (1) **Abandonment of goods to the Crown.**—The owner of goods that have been imported but have not been released may, with the authorization of an officer and subject to the conditions set out in subsection (2), abandon the goods to Her Majesty in right of Canada.
- (2) Conditions of abandonment.—Any person who abandons goods to Her Majesty under subsection (1) is liable for all reasonable expenses incurred by Her Majesty in the disposal of the goods where they are disposed of otherwise than by sale.

Unclaimed Goods

- 37. (1) Unclaimed goods.—Goods, other than goods of a prescribed class, that have not been removed from a customs office, sufferance warehouse, bonded warehouse or duty free shop within such period of time as may be prescribed may be deposited by an officer in a place of safe-keeping designated by the Minister for that purpose.
- (2) Extension of prescribed period.—The Minister may extend any period of time prescribed pursuant to subsection (1) in respect of any particular goods.
- (3) **Deeming provision.**—A place of safe-keeping referred to in this section shall, for the purposes of this Act, be deemed to be a customs office. S.C. 1993, c. 25, s. 74.
- 38. (1) Risk and storage charges.—Goods that are deposited in a place of safe-keeping pursuant to section 37 shall be kept there at the risk of the owner and importer thereof, and the owner and importer are jointly and severally liable for such storage charges as may be prescribed and any expenses incurred in moving the goods from the customs office, sufferance warehouse, bonded warehouse or duty free shop to the place of safe-keeping.

- (2) **No removal until expenses paid.**—No goods shall be removed by any person other than an officer from a place of safe-keeping referred to in section 37 until the charges and expenses referred to in subsection (1) have been paid.
- **39.** (1) **Unclaimed goods forfeit.**—Goods that have not been removed from a place of safe-keeping referred to in section 37 within such period of time after they were deposited therein as may be prescribed are, at the termination of that period of time, forfeit.
- (2) **Expenses of disposal.**—The importer of goods that are forfeit under subsection (1) and the owner thereof at the time of forfeiture are jointly and severally liable for all reasonable expenses incurred by Her Majesty in right of Canada in the disposal of the goods where they are disposed of otherwise than by sale.

Goods of a Prescribed Class

39.1 Goods forfeit if not removed.—Goods of a prescribed class that have not been removed from a customs office, sufferance warehouse, bonded warehouse or duty free shop within such period of time as may be prescribed are, at the end of that period of time, forfeit. S.C. 1993, c. 25, s. 75.

Importers' Records

- **40.** (1) **Importers' records.**—Every person who imports goods or causes goods to be imported for sale or for any industrial, occupational, commercial, institutional or other like use shall keep at the person's place of business in Canada or at such other place in Canada as may be designated by the Minister such records in respect of such goods in such manner and for such period of time as may be prescribed and shall, where an officer so requests, make them available to the officer and answer truthfully any questions asked by the officer in respect of the records.
- (2) **Minister's request.**—Where, in the opinion of the Minister, a person has not kept records in Canada in accordance with subsection (1), the Minister may request that person to keep records in Canada and to comply with subsection (1) in respect thereof.
- (3) **Records.**—Every person who is authorized under paragraph 32(6)(a) or subsection 32(7) to account for goods shall keep at that person's place of business or at such other place as may be designated by the Minister such records in respect of such goods in such manner and for such period of time as may be prescribed and shall, where an officer so requests, make them available to the officer and answer truthfully any questions asked by the officer in respect of the records.
- (4) **Minister's request.**—Where, in the opinion of the Minister, a person has not kept records in respect of goods in accordance with subsection (3), the Minister may request that person to comply with that subsection in respect of the goods. S.C. 1992, c. 28, s. 10; S.C. 1993, c. 44, s. 85.
- **41.** (1) **Detention of goods.**—Any goods imported by or on behalf of a person to whom a request is made under subsection 40(2) at any time after the request is made may be detained by an officer at the expense of that person until the request is complied with.
- (2) **Disposition of detained goods.**—Goods that are detained under subsection (1) may be deposited in a place of safe-keeping in accordance with subsection 37(1) as if they were unclaimed and may be dealt with thereafter under sections 37 to 39.

42. Audit.—An officer may at all reasonable times enter any premises or place where records are kept pursuant to section 40 and audit or examine such records.

Verifications Entering Prescribed Premises or Place

- **42.1** (1) **Verification of origin, relief from duty or drawback.**—Any officer, or any officer within a class of officers, designated by the Minister for the purposes of this section may at all reasonable times and subject to the prescribed conditions enter any prescribed premises or place
 - (a) to conduct a verification of origin of goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed; or
 - (b) to verify the amount, if any, of
 - (i) a relief under section 80 of the *Customs Tariff* from the payment of any customs duty payable in respect of goods imported from a NAFTA country, or
 - (ii) a drawback under section 82 of this Act of duties paid in respect of goods imported from a NAFTA country.
- (2) Where no consent to verification.—Where an exporter or producer of goods that are subject to a verification of origin under this section does not consent to the verification of origin within the prescribed time, preferential tariff treatment under NAFTA may be withdrawn from the goods. S.C. 1993, c. 44, s. 86.

Statement of Origin

- **42.2** (1) **Definition of "customs administration".**—For the purposes of this section and section 42.3, "customs administration" has the meaning assigned to that expression by Article 514 of NAFTA.
- (2) **Statement of origin.**—On completion of a verification of origin under paragraph 42.1(1)(a) or by such other manner as may be prescribed, an officer designated pursuant to subsection 42.1(1) shall provide the exporter or producer whose goods are subject to the verification of origin with a statement as to whether the goods are eligible for preferential tariff treatment under NAFTA under the regulations made pursuant to section 13 of the *Customs Tariff*.
- (3) **Idem.**—A statement referred to in subsection (2) shall include any findings of fact or law on which it was based. S.C. 1993, c. 44, s. 86.

Effective Date of Re-determination of Origin

- **42.3** (1) Effective date of re-determination of origin of goods subject to verification of origin.—Subject to subsection (3), where the result of a re-determination of origin made under section 61 as applied by subsection 57.2(3.1) in respect of goods that are the subject of a verification of origin under this Act, is that
 - (a) the goods are not eligible for preferential tariff treatment under NAFTA on the basis of the tariff classification or value of one or more materials used in their production, and
 - (b) that tariff classification or value differs from the tariff classification or value applied to those materials by the NAFTA country from which the goods were exported,

the re-determination of origin shall not take effect until notice of it is given to the importer of the goods and any person who completed and signed a Certificate of Origin for the goods.

- (2) **Idem.**—A re-determination of origin referred to in subsection (1) shall not be applied to goods imported before the date on which the notice was given, where the customs administration of the NAFTA country from which the goods were exported has, before that date,
 - (a) given an advance ruling pursuant to Article 509 of NAFTA, or other ruling referred to in paragraph 12 of Article 506 of NAFTA, on the tariff classification or value of the materials referred to in subsection (1); or
 - (b) given consistent treatment with respect to the tariff classification or value of the materials referred to in subsection (1) on their importation into the NAFTA country.
- (3) **Postponement of effective date.**—The date on which a re-determination of origin referred to in subsection (1) takes effect shall be postponed for a period not exceeding ninety days, where the importer of the goods that are the subject of the re-determination or any person who completed and signed a Certificate of Origin for the goods establishes to the satisfaction of the Minister that the importer or the person, as the case may be, has relied in good faith, to the detriment of the importer or person, on the tariff classification or value applied to the materials referred to in that subsection by the customs administration of the NAFTA country from which the goods were exported. S.C. 1993, c. 44, s. 86.

Denial or Withdrawal of Benefit of Preferential Tariff Treatment

- **42.4** (1) **Definition of "identical goods".**—In this section, "identical goods" has the meaning assigned to that expression by Article 514 of NAFTA.
- (2) **Denial or withdrawal of benefit.**—Notwithstanding subsection 25.2(5.1) of the *Customs Tariff*, the Minister may, subject to the prescribed conditions, deny or withdraw preferential tariff treatment under NAFTA in respect of goods imported from a NAFTA country for which such treatment is claimed, where the exporter or producer of the goods has made false representations that identical goods exported or produced by that exporter or producer that are imported from a NAFTA country and for which preferential tariff treatment under NAFTA is claimed are eligible for such treatment. S.C. 1993, c. 44, s. 86.
- **43.** (1) **Production of documents.**—The Minister may, for any purposes related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require any person to produce at a place specified by the Minister any books, letters, accounts, invoices, statements (financial or otherwise) or other documents within such reasonable time as may be stipulated therein.
- (2) **Compliance.**—Any person who is required to produce any books, letters, accounts, invoices, statements or other documents under subsection (1) shall, notwithstanding any other law to the contrary, but subject to subsection (3), do so as required.
- (3) **Application of section 232 of the** *Income Tax Act*. The definitions "lawyer" and "solicitor-client privilege" in subsection 232(1) of the *Income Tax Act*, and subsection 232(2) of that Act, apply with respect to a requirement under subsection (1) as if the reference in subsection 232(2) to section 231.2 of that Act were a reference to this section.

Advance Rulings

43.1 (1) **Advance rulings.**—Any officer, or any officer within a class of officers, designated by the Minister for the purposes of this section shall, prior to the importation of goods from a NAFTA country, on application by any member of a prescribed class, within the prescribed time, in the prescribed manner and in the prescribed form containing the prescribed

information, give an advance ruling with respect to any matter concerning those goods that is set out in paragraph 1 of Article 509 of NAFTA.

- (2) Regulations.—The Governor in Council may make regulations prescribing
- (a) the application of an advance ruling; and
- (b) the modification or revocation of an advance ruling. S.C. 1993, c. 44, s. 87.

PART III

CALCULATION OF DUTY

Duties Based on Percentage Rates

VALUATION FOR DUTY

44. Ad valorem rates of duty.—Where duties, other than duties or taxes levied under the Excise Tax Act or the Excise Act, are imposed on goods at a percentage rate, such duties shall be calculated by applying the rate to a value determined in accordance with sections 45 to 55.

Interpretation

- 45. (1) Definitions.—In this section and sections 46 to 55,
- "computed value".—"computed value" means, in respect of goods, the value of the goods determined in accordance with section 52;
- "country of export".—"country of export" means, in respect of goods, the country from which the goods are shipped directly to Canada;
- "deductive value".—"deductive value" means, in respect of goods, the value of the goods determined in accordance with subsection 51(2);
- "goods of the same class or kind".—"goods of the same class or kind", in relation to goods being appraised, means imported goods that
 - (a) are within a group or range of imported goods produced by a particular industry or industry sector that includes identical goods and similar goods in relation to the goods being appraised, and
 - (b) for the purposes of
 - (i) section 51, were produced in any country and exported from any country, and
 - (ii) section 52, were produced in and exported from the same country as the country in and from which the goods being appraised were produced and exported;
- "identical goods".—"identical goods", in relation to goods being appraised, means imported goods that
 - (a) are the same in all respects, including physical characteristics, quality and reputation, as the goods being appraised, except for minor differences in appearance that do not affect the value of the goods,
 - (b) were produced in the same country as the country in which the goods being appraised were produced, and
 - (c) were produced by or on behalf of the person by or on behalf of whom the goods being appraised were produced.
- but does not include imported goods where engineering, development work, art work, design

work, plans or sketches undertaken in Canada were supplied, directly or indirectly, by the purchaser of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods;

- "price paid or payable".—"price paid or payable", in respect of the sale of goods for export to Canada, means the aggregate of all payments made or to be made, directly or indirectly, in respect of the goods by the purchaser to or for the benefit of the vendor;
- "produce".—"produce" includes grow, manufacture and mine;
- "similar goods".—"similar goods", in relation to goods being appraised, means imported goods that
 - (a) closely resemble the goods being appraised in respect of their component materials and characteristics.
 - (b) are capable of performing the same functions as, and of being commercially interchangeable with, the goods being appraised,
 - (c) were produced in the same country as the country in which the goods being appraised were produced, and
 - (d) were produced by or on behalf of the person by or on behalf of whom the goods being appraised were produced,

but does not include imported goods where engineering, development work, art work, design work, plans or sketches undertaken in Canada were supplied, directly or indirectly, by the purchaser of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods;

- "sufficient information".—"sufficient information", in respect of the determination of any amount, difference or adjustment, means objective and quantifiable information that establishes the accuracy of the amount, difference or adjustment;
- "transaction value".—"transaction value", in respect of goods, means the value of the goods determined in accordance with subsection 48(4).
- (2) Goods deemed to be identical goods or similar goods.—For the purposes of this section and sections 46 to 55, where there are no identical goods or similar goods, as the case may be, in relation to goods being appraised but there are goods that would be identical goods or similar goods, as the case may be, if they were produced by or on behalf of the person by or on behalf of whom the goods being appraised were produced, those goods shall be deemed to be identical goods or similar goods, as the case may be.
- (3) **Related persons.**—For the purposes of sections 46 to 55, persons are related to each other if
 - (a) they are individuals connected by blood relationship, marriage or adoption within the meaning of subsection 251(6) of the *Income Tax Act*;
 - (b) one is an officer or director of the other;
 - (c) each such person is an officer or director of the same two corporations, associations, partnerships or other organizations;
 - (d) they are partners;
 - (e) one is the employer of the other;
 - (f) they directly or indirectly control or are controlled by the same person;
 - (g) one directly or indirectly controls or is controlled by the other;

- (h) any other person directly or indirectly owns, holds or controls five per cent or more of the outstanding voting stock or shares of each such person; or
- (i) one directly or indirectly owns, holds or controls five per cent or more of the outstanding voting stock or shares of the other.

Determination of Value for Duty

46. Determination of value for duty.—The value for duty of imported goods shall be determined in accordance with sections 47 to 55.

Order of Consideration of Methods of Valuation

- **47.** (1) **Primary basis of appraisal.**—The value for duty of goods shall be appraised on the basis of the transaction value of the goods in accordance with the conditions set out in section 48.
- (2) Subsidiary bases of appraisal.—Where the value for duty of goods is not appraised in accordance with subsection (1), it shall be appraised on the basis of the first of the following values, considered in the order set out herein, that can be determined in respect of the goods and that can, under sections 49 to 52, be the basis on which the value for duty of the goods is appraised:
 - (a) the transaction value of identical goods that meets the requirements set out in section 49:
 - (b) the transaction value of similar goods that meets the requirements set out in section 50;
 - (c) the deductive value of the goods; and
 - (d) the computed value of the goods.
- (3) Request of importer.—Notwithstanding subsection (2), on the written request of the importer of any goods being appraised made prior to the commencement of the appraisal of those goods, the order of consideration of the values referred to in paragraphs (2)(c) and (d) shall be reversed.
- (4) **Residual basis of appraisal.**—Where the value for duty of goods is not appraised on the basis of any of the values referred to in paragraphs (2)(a) to (d), the value for duty of those goods shall be appraised under section 53.

Transaction Value of the Goods

- **48.** (1) **Transaction value as primary basis of appraisal.**—Subject to subsection (6), the value for duty of goods is the transaction value of the goods if the goods are sold for export to Canada and the price paid or payable for the goods can be determined and if
 - (a) there are no restrictions respecting the disposition or use of the goods by the purchaser thereof, other than restrictions that
 - (i) are imposed by law,
 - (ii) limit the geographical area in which the goods may be resold, or
 - (iii) do not substantially affect the value of the goods;
 - (b) the sale of the goods by the vendor to the purchaser or the price paid or payable for the goods is not subject to some condition or consideration, with respect to the goods, in respect of which a value cannot be determined;

- (c) where any part of the proceeds of any subsequent resale, disposal or use of the goods by the purchaser thereof is to accrue, directly or indirectly, to the vendor, the price paid or payable for the goods includes the value of that part of the proceeds or such price is adjusted in accordance with subparagraph (5)(a)(v); and
- (d) the purchaser and the vendor of the goods are not related to each other at the time the goods are sold for export or, where the purchaser and the vendor are related to each other at that time.
 - (i) their relationship did not influence the price paid or payable for the goods, or
 - (ii) the importer of the goods demonstrates that the transaction value of the goods meets the requirement set out in subsection (3).
- (2) **Procedure in application of paragraph** (1)(d).—In the application of paragraph (1)(d), where the purchaser and the vendor of goods being appraised are related to each other at the time the goods are sold for export and the officer who is appraising the value for duty of the goods has grounds to believe that the requirement set out in subparagraph (1)(d)(i) is not met, the officer shall notify the importer of the goods of such grounds and, on the written request of the importer, the notification shall be in writing.
- (3) Requirement for accepting transaction value where purchaser and vendor related.—For the purposes of subparagraph (1)(d)(ii), the transaction value of goods being appraised shall, taking into consideration any relevant factors including, without limiting the generality of the foregoing, such factors and differences as may be prescribed, closely approximate one of the following values that is in respect of identical goods or similar goods exported at the same or substantially the same time as the goods being appraised and is the value for duty of the goods to which it relates:
 - (a) the transaction value of identical goods or similar goods in a sale of those goods for export to Canada between a vendor and purchaser who are not related to each other at the time of the sale:
 - (b) the deductive value of identical goods or similar goods; or
 - (c) the computed value of identical goods or similar goods.
- (4) **Determination of transaction value.**—The transaction value of goods shall be determined by ascertaining the price paid or payable for the goods when the goods are sold for export to Canada and adjusting the price paid or payable in accordance with subsection (5).
- (5) **Adjustment of price paid or payable.**—The price paid or payable in the sale of goods for export to Canada shall be adjusted
 - (a) by adding thereto amounts, to the extent that each such amount is not already included in the price paid or payable for the goods, equal to
 - (i) commissions and brokerage in respect of the goods incurred by the purchaser thereof, other than fees paid or payable by the purchaser to his agent for the service of representing the purchaser abroad in respect of the sale,
 - (ii) the packing costs and charges incurred by the purchaser in respect of the goods, including the cost of cartons, cases and other containers and coverings that are treated for customs purposes as being part of the imported goods and all expenses of packing incident to placing the goods in the condition in which they are shipped to Canada,
 - (iii) the value of any of the following goods and services, determined in the manner prescribed, that are supplied, directly or indirectly, by the purchaser of the goods free of charge or at a reduced cost for use in connection with the production and sale for

export of the imported goods, apportioned to the imported goods in a reasonable manner and in accordance with generally accepted accounting principles:

- (A) materials, components, parts and other goods incorporated in the imported goods,
- (B) tools, dies, moulds and other goods utilized in the production of the imported goods,
- (C) any materials consumed in the production of the imported goods, and
- (D) engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Canada and necessary for the production of the imported goods,
- (iv) royalties and licence fees, including payments for patents, trade-marks and copyrights, in respect of the goods that the purchaser of the goods must pay, directly or indirectly, as a condition of the sale of the goods for export to Canada, exclusive of charges for the right to reproduce the goods in Canada,
- (v) the value of any part of the proceeds of any subsequent resale, disposal or use of the goods by the purchaser thereof that accrues or is to accrue, directly or indirectly, to the vendor, and
- (vi) the cost of transportation of, the loading, unloading and handling charges and other charges and expenses associated with the transportation of, and the cost of insurance relating to the transportation of, the goods to the place within the country of export from which the goods are shipped directly to Canada;
- (b) by deducting therefrom amounts, to the extent that each such amount is included in the price paid or payable for the goods, equal to
 - (i) the cost of transportation of, the loading, unloading and handling charges and other charges and expenses associated with the transportation of, and the cost of insurance relating to the transportation of, the goods from the place within the country of export from which the goods are shipped directly to Canada, and
 - (ii) any of the following costs, charges or expenses if the cost, charge or expense is identified separately from the price paid or payable for the goods:
 - (A) any reasonable cost, charge or expense that is incurred for the construction, erection, assembly or maintenance of, or technical assistance provided in respect of, the goods after the goods are imported, and
 - (B) any duties and taxes paid or payable by reason of the importation of the goods or sale of the goods in Canada, including, without limiting the generality of the foregoing, any duties or taxes levied on the goods under the *Customs Tariff*, the *Excise Tax Act*, the *Excise Act*, the *Special Import Measures Act* or any other law relating to customs; and
- (c) by disregarding any rebate of, or other decrease in, the price paid or payable for the goods that is effected after the goods are imported.
- (6) Effect of absence of sufficient information.—Where there is not sufficient information to determine any of the amounts required to be added to the price paid or payable in respect of any goods being appraised, the value for duty of the goods shall not be appraised under this section.

Transaction Value of Identical Goods

- **49.** (1) **Transaction value of identical goods as value for duty.**—Subject to subsections (2) to (5), where the value for duty of goods is not appraised under section 48, the value for duty of the goods is, if it can be determined, the transaction value of identical goods, in a sale of those goods for export to Canada, if that transaction value is the value for duty of the identical goods and the identical goods were exported at the same or substantially the same time as the goods being appraised and were sold under the following conditions:
 - (a) to a purchaser at the same or substantially the same trade level as the purchaser of the goods being appraised; and
 - (b) in the same or substantially the same quantities as the goods being appraised.
- (2) Where identical goods sold under different conditions.—Where the value for duty of goods being appraised cannot be determined under subsection (1) because identical goods were not sold under the conditions described in paragraphs (1)(a) and (b), there shall be substituted therefor, in the application of subsection (1), identical goods sold under any of the following conditions:
 - (a) to a purchaser at the same or substantially the same trade level as the purchaser of the goods being appraised but in quantities different from the quantities in which those goods were sold:
 - (b) to a purchaser at a trade level different from that of the purchaser of the goods being appraised but in the same or substantially the same quantities as the quantities in which those goods were sold; or
 - (c) to a purchaser at a trade level different from that of the purchaser of the goods being appraised and in quantities different from the quantities in which those goods were sold.
- (3) Adjustment of transaction value of identical goods.—For the purposes of determining the value for duty of goods being appraised under subsection (1), the transaction value of identical goods shall be adjusted by adding thereto or deducting therefrom, as the case may be, amounts to account for
 - (a) commercially significant differences between the costs, charges and expenses referred to in subparagraph 48(5)(a)(vi) in respect of the identical goods and those costs, charges and expenses in respect of the goods being appraised that are attributable to differences in distances and modes of transport; and
 - (b) where the transaction value is in respect of identical goods sold under the conditions described in any of paragraphs (2)(a) to (c), differences in the trade levels of the purchasers of the identical goods and the goods being appraised or the quantities in which the identical goods and the goods being appraised were sold or both, as the case may be.
- (4) Effect of absence of sufficient information.—Where there is not sufficient information to determine any amount referred to in subsection (3) or the adjustment therefor in relation to the transaction value of identical goods, the value for duty of the goods being appraised shall not be appraised on the basis of that transaction value under this section.
- (5) Selection of lowest transaction value of identical goods.—Where, in relation to goods being appraised, there are two or more transaction values of identical goods that meet all the requirements set out in subsections (1) and (3) or, where there is no such transaction value but there are two or more transaction values of identical goods sold under the conditions described in any of paragraphs (2)(a) to (c) that meet all the requirements set out in this section

that are applicable by virtue of subsection (2), the value for duty of the goods being appraised shall be determined on the basis of the lowest such transaction value.

Transaction Value of Similar Goods

- 50. (1) Transaction value of similar goods as value for duty.—Subject to subsections (2) and 49(2) to (5), where the value for duty of goods is not appraised under section 48 or 49, the value for duty of the goods is, if it can be determined, the transaction value of similar goods, in a sale of those goods for export to Canada, if that transaction value is the value for duty of the similar goods and the similar goods were exported at the same or substantially the same time as the goods being appraised and were sold under the following conditions:
 - (a) to a purchaser at the same or substantially the same trade level as the purchaser of the goods being appraised; and
 - (b) in the same or substantially the same quantities as the goods being appraised.
- (2) **Application of section 49.**—Subsections 49(2) to (5) apply to this section in respect of similar goods and wherever in those subsections the expression "identical goods" is referred to, there shall be substituted therefor the expression "similar goods".

Deductive Value

- **51.** (1) **Deductive value as value for duty.**—Subject to subsections (5) and 47(3), where the value for duty of goods is not appraised under sections 48 to 50, the value for duty of the goods is the deductive value of the goods if it can be determined.
- (2) **Determination of deductive value.**—The deductive value of goods being appraised is
 - (a) where the goods being appraised, identical goods or similar goods are sold in Canada in the condition in which they were imported at the same or substantially the same time as the time of importation of the goods being appraised, the price per unit, determined in accordance with subsection (3) and adjusted in accordance with subsection (4), at which the greatest number of units of the goods being appraised, identical goods or similar goods are so sold:
 - (b) where the goods being appraised, identical goods or similar goods are not sold in Canada in the circumstances described in paragraph (a) but are sold in Canada in the condition in which they were imported before the expiration of ninety days after the time of importation of the goods being appraised, the price per unit, determined in accordance with subsection (3) and adjusted in accordance with subsection (4), at which the greatest number of units of the goods being appraised, identical goods or similar goods are so sold at the earliest date after the time of importation of the goods being appraised; or
 - (c) where the goods being appraised, identical goods or similar goods are not sold in Canada in the circumstances described in paragraph (a) or (b) but the goods being appraised, after being assembled, packaged or further processed in Canada, are sold in Canada before the expiration of one hundred and eighty days after the time of importation thereof and the importer of the goods being appraised requests that this paragraph be applied in the determination of the value for duty of those goods, the price per unit, determined in accordance with subsection (3) and adjusted in accordance with subsection (4), at which the greatest number of units of the goods being appraised are so sold.
- (3) **Price per unit.**—For the purposes of subsection (2), the price per unit, in respect of goods being appraised, identical goods or similar goods, shall be determined by ascertaining

the unit price, in respect of sales of the goods at the first trade level after importation thereof to persons who

- (a) are not related to the persons from whom they buy the goods at the time the goods are sold to them, and
- (b) have not supplied, directly or indirectly, free of charge or at a reduced cost for use in connection with the production and sale for export of the goods any of the goods or services referred to in subparagraph 48(5)(a)(iii),

at which the greatest number of units of the goods is sold where, in the opinion of the Minister or any person authorized by him, a sufficient number of such sales have been made to permit a determination of the price per unit of the goods.

- (4) **Adjustment of price per unit.**—For the purposes of subsection (2), the price per unit, in respect of goods being appraised, identical goods or similar goods, shall be adjusted by deducting therefrom an amount equal to the aggregate of
 - (a) an amount, determined in the manner prescribed, equal to
 - (i) the amount of commission generally earned on a unit basis, or
 - (ii) the amount for profit and general expenses, including all costs of marketing the goods, considered together as a whole, that is generally reflected on a unit basis

in connection with sales in Canada of goods of the same class or kind as those goods.

- (b) the costs, charges and expenses in respect of the transportation and insurance of the goods within Canada and the costs, charges and expenses associated therewith that are generally incurred in connection with sales in Canada of the goods being appraised, identical goods or similar goods, to the extent that an amount for such costs, charges and expenses is not deducted in respect of general expenses under paragraph (a),
- (c) the costs, charges and expenses referred to in subparagraph 48(5)(b)(i), incurred in respect of the goods, to the extent that an amount for such costs, charges and expenses is not deducted in respect of general expenses under paragraph (a),
- (d) any duties and taxes referred to in clause 48(5)(b)(ii)(B) in respect of the goods, to the extent that an amount for such duties and taxes is not deducted in respect of general expenses under paragraph (a), and
- (e) where paragraph (2)(c) applies, the amount of the value added to the goods that is attributable to the assembly, packaging or further processing in Canada of the goods.
- (5) **Rejection of deductive value.**—Where there is not sufficient information to determine an amount referred to in paragraph (4)(e) in respect of any goods being appraised, the value for duty of the goods shall not be appraised under paragraph (2)(c).
- (6) **Definition of "time of importation".**—In this section, "time of importation" means, in respect of goods, the date on which an officer authorizes, pursuant to this Act, the release of the goods.

Computed Value

- **52.** (1) Computed value as value for duty.—Subject to subsection 47(3), where the value for duty of goods is not appraised under sections 48 to 51, the value for duty of the goods is the computed value of the goods if it can be determined.
- (2) **Determination of computed value.**—The computed value of goods being appraised is the aggregate of amounts equal to

- (a) subject to subsection (3), the costs, charges and expenses incurred in respect of, or the value of.
 - (i) materials employed in producing the goods being appraised, and
 - (ii) the production or other processing of the goods being appraised,

determined in the manner prescribed; and

- (b) the amount, determined in the manner prescribed, for profit and general expenses considered together as a whole, that is generally reflected in sales for export to Canada of goods of the same class or kind as the goods being appraised made by producers in the country of export.
- (3) Amounts included.—Without limiting the generality of paragraph (2)(a), the costs, charges, expenses and value referred to in that paragraph include:
 - (a) the costs, charges and expenses referred to in subparagraph 48(5)(a)(ii);
 - (b) the value of any of the goods and services referred to in subparagraph 48(5)(a)(iii), determined and apportioned to the goods being appraised as referred to in that subparagraph, whether or not such goods and services have been supplied free of charge or at a reduced cost; and
 - (c) the costs, charges and expenses incurred by the producer in respect of engineering, development work, art work, design work, plans or sketches undertaken in Canada that were supplied, directly or indirectly, by the purchaser of the goods being appraised for use in connection with the production and sale for export of those goods, apportioned to the goods being appraised as referred to in subparagraph 48(5)(a)(iii).
- (4) **Definition of "general expenses".**—For the purposes of this section, "general expenses" means the direct and indirect costs, charges and expenses of producing and selling goods for export, other than the costs, charges and expenses referred to in paragraph (2)(a) and subsection (3).

Residual Method

- **53. Residual basis of appraisal.**—Where the value for duty of goods is not appraised under sections 48 to 52, it shall be appraised on the basis of
 - (a) a value derived from the method, from among the methods of valuation set out in sections 48 to 52, that, when applied in a flexible manner to the extent necessary to arrive at a value for duty of the goods, conforms closer to the requirements with respect to that method than any other method so applied; and
 - (b) information available in Canada.

General

- 54. Goods exported to Canada through another country.—For the purposes of sections 45 to 55, where goods are exported to Canada from any country but pass in transit through another country, the goods shall, subject to such terms and conditions as may be prescribed, be deemed to be shipped directly to Canada from the first mentioned country.
- **55.** Value for duty in Canadian currency.—The value for duty of imported goods shall be computed in Canadian currency in accordance with regulations made under the *Currency Act*.
 - 56. Informing importer of determination of value.—The importer of any goods, on his

written request, shall be informed in writing of the manner in which the value for duty of the goods was determined.

Duties Based on Specific Quantities or Specific Values

57. Specific quantities or specific values.—Where duties are imposed on goods according to a specific quantity or a specific value, such duties shall be deemed to apply in the same proportion to any larger or smaller quantity or value, and to any fractional part of such specific quantity or value.

Marking Determination

- **57.01** (1) **Marking determination.**—Any officer, or any officer within a class of officers, designated by the Minister for the purposes of this section may, at any time before or within thirty days after goods imported from a NAFTA country are accounted for under subsection 32(1), (3) or (5), in the prescribed manner and subject to the prescribed conditions, make a determination as to whether the goods have been marked in the manner referred to in section 35.01 and shall give notice of the determination to the prescribed class of persons.
- (2) **Deemed determination.**—Where an officer does not make a determination under subsection (1) in respect of goods imported from a NAFTA country within thirty days after the time the goods are accounted for under subsection 32(1), (3) or (5), a determination as to whether the goods have been marked in the manner referred to in section 35.01 shall be deemed to have been made in accordance with any representations that have been made in respect of the marking of the goods by the person who accounted for the goods. S.C. 1993, c. 44, s. 88.

Determination and Re-determination of Origin

- **57.1 Origin of imported goods.**—For the purposes of section 57.2, the origin of imported goods shall be determined in accordance with section 13 of the *Customs Tariff* and the regulations thereunder. S.C. 1988, c. 65, s. 70; S.C. 1993, c. 44, s. 89.
- **57.2** (1) **Determination of origin.**—An officer may determine the origin of imported goods at any time before or within thirty days after they are accounted for under subsection 32(1), (3) or (5).
- (1.1) **Notice.**—Where an officer makes a determination under subsection (1), the officer shall give notice of the determination to any person who has completed and signed a Certificate of Origin for the goods that were the subject of the determination, in addition to the person who accounted for the goods under subsection 32(1), (3) or (5).
- (2) **Deemed determination.**—Where an officer does not make a determination under subsection (1) in respect of imported goods, a determination of the origin of the goods shall be deemed to have been made under this section thirty days after the time the goods were accounted for under subsection 32(1), (3) or (5) in accordance with any representations made at that time in respect of the origin of goods by the person accounting for the goods.
- (2.1) **Determination final.**—Subject to subsection (3.1), a determination of the origin of imported goods under this section is final unless, in the case of goods other than goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed, a re-determination of the origin of the imported goods is made by the Minister within two years after they are accounted for under subsection 32(1), (3) or (5).
- (2.2) **Suspension.**—The operation of subsection (3) is suspended during the period in which subsection (2.1) is in force.

- (3) **Determination final.**—Subject to subsection (4), a determination of the origin of imported goods under this section is final unless, in the case of goods other than goods imported from the United States, a re-determination of the origin of the imported goods is made by the Minister within two years after they are accounted for under subsection 32(1), (3) or (5).
- (3.1) Re-determinations and appeals for NAFTA goods.—Subject to this section, sections 58 to 72 apply, with such modifications as the circumstances require, in respect of a determination of origin under this section as to the origin of goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed as if it were a determination of the tariff classification of the goods, and, for greater certainty, any matter that may be prescribed in relation to a request referred to in subsection 60(2) or 63(2) may be prescribed in relation to a request for a re-determination or further re-determination of the origin of the goods.
- (3.2) Additional persons who may request re-determination.—In addition to the importer or any person who is liable to pay duties owing on the goods, other than a person authorized by regulations made pursuant to paragraph 32(6)(a) or under subsection 32(7) to account for the goods, any person who has completed and signed a Certificate of Origin for goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed that are the subject of a determination of origin under this section is entitled to request a re-determination of the origin of those goods under subsection 60(1) as applied by subsection (3.1).
- (3.3) Notice of re-determination by designated officer or Deputy Minister.—In addition to the person who accounted for the goods under subsection 32(1), (3) or (5), the importer of the goods or the person who was the owner of the goods at the time of release, any person who has competed and signed a Certificate of Origin for goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed that are the subject of a determination of origin under this section is entitled to be given notice of the re-determination of the origin of those goods under section 61 or 64 as applied by subsection (3.1), as the case may be.
- (3.4) Effect of re-determination by designated officer.—In the case of a re-determination by a designated officer of the origin of goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed that are the subject of a determination of origin under this section, the reference in subsection 62(1) to "the person who was given notice of the decision thereunder" and the reference in subsection 62(2) to "the person referred to in that subsection" shall be read as a reference to
 - (a) in the case of a re-determination under section 60, "the importer or any person liable to pay duties owing on the goods (other than a person authorized under paragraph 32(6)(a) or subsection 32(7) to account for the goods)"; and
 - (b) in the case of a re-determination under section 61, "the person who accounted for the goods under subsection 32(1), (3) or (5), the importer of the goods, or the person who was the owner of the goods at the time of release".
- (3.5) Effect of re-determination by Deputy Minister.—In the case of a re-determination by the Deputy Minister of the origin of goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed that are the subject of a determination of origin under this section, the reference in subsection 65(1) to "the person who is given notice of the decision thereunder" and in subsection 65(2) to "the person" shall be read as a reference to
 - (a) in the case of a re-determination under section 63 of a re-determination by a designated officer under section 60, "the importer or any person liable to pay duties owing on the

goods (other than a person authorized under paragraph 32(6)(a) or subsection 32(7) to account for the goods)"; and

- (b) in the case of a re-determination under section 63 of a re-determination by a designated officer under section 61 or in the case of a re-determination under section 64, "the person who accounted for the goods under subsection 32(1), (3) or (5), the importer of the goods, or the person who was the owner of the goods at the time of release".
- (3.6) **Suspension.**—The operation of subsection (4) is suspended during the period in which subsections (3.1) to (3.5) are in force.
- (4) **Re-determinations and appeals for U.S. goods.**—Sections 58 to 72 apply, with such modifications as the circumstances require, in respect of a determination under this section as to the origin of goods imported from the United States, as if it were a determination of the tariff classification of the goods, and, for greater certainty, any matter that may be prescribed in relation to a request referred to in subsection 60(2) or 63(2) may be prescribed in relation to a request for a re-determination or further re-determination of the origin of goods. S.C. 1988, c. 65, s. 70; S.C. 1993, c. 44, s. 90.

Determination of Tariff Classification and Appraisal for Value

- **58.** (1) **Determination of tariff classification and appraisal of value for duty.**—An officer may determine the tariff classification and appraise the value for duty of imported goods at any time before or within thirty days after they are accounted for under subsection 32(1), (3) or (5).
- (2) **Effect of determination or appraisal.**—Where a determination or appraisal is made under subsection (1) in respect of goods, the person who accounts for the goods shall, in accordance with the determination or appraisal,
 - (a) pay any amount owing as duties in respect of the goods or, where a request is made under section 60, give security satisfactory to the Minister in respect of the amount owing or that may become owing on that amount; or
 - (b) be given a refund of any amount paid in excess of the duties owing in respect of the goods.
- (3) **Payment of amounts owing or refund.**—Any amount owing under subsection (2) or 66(3) in respect of goods, other than an amount in respect of which security is given, is payable within thirty days after the day the determination or appraisal is made, whether or not a request is made under section 60.
- (4) **Amount owing.**—For the purposes of paragraph (2)(a), the amount owing as duties in respect of goods under subsection (2) does not include any amount owing in respect thereof pursuant to section 32 or 33.
- (5) **Deemed determination and appraisal.**—Where an officer does not make a determination or an appraisal under subsection (1) in respect of goods, a determination of the tariff classification and an appraisal of the value for duty of the goods shall, for the purposes of sections 60, 61 and 63, be deemed to have been made thirty days after the time the goods were accounted for under subsection 32(1), (3) or (5) in accordance with any representations made at that time in respect of the tariff classification or value for duty by the person accounting for the goods.
- (6) **Review.**—A determination of tariff classification or an appraisal of value for duty is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by sections 60 to 65. S.C. 1992, c. 28, s. 11.

Re-determination and Re-appraisal by Designated Officer

- **59. Designated officer.**—Any officer, or any officer within a class of officers, designated by the Minister for the purposes of this section (in sections 60 and 61 referred to as a "designated officer") may make re-determinations of tariff classifications or re-appraisals of value for duty under sections 60 and 61.
- **60.** (1) **Request for re-determination or re-appraisal.**—The importer or any person who is liable to pay duties owing on imported goods (other than a person authorized under paragraph 32(6)(a) or subsection 32(7) to account for the goods) may, after all amounts owing in respect of the goods as duties and interest have been paid or security satisfactory to the Minister has been given in respect of the total amount owing,
 - (a) within ninety days, or
 - (b) where the Minister deems it advisable, within two years

after the time the determination or appraisal was made in respect of the goods under section 58, request a re-determination of the tariff classification or a re-appraisal of the value for duty.

- (2) **Idem.**—A request under this section shall be made to a designated officer in the prescribed manner and in the prescribed form containing the prescribed information.
- (3) **Decision.**—On receipt of a request under this section, a designated officer shall, with all due dispatch, re-determine the tariff classification or re-appraise the value for duty, as the case may be, and give notice of his decision to the person who made the request. S.C. 1992, c. 28, s. 12.
- **61. Re-determination or re-appraisal without request.**—A designated officer may, after imported goods have been released,
 - (a) within ninety days,
 - (b) where it was not possible for an officer to make a determination or an appraisal under subsection 58(1) because of insufficient information, within two years,
 - (c) where, on the basis of an audit or examination under section 42 or a verification of origin under this Act, the designated officer deems it advisable, within two years, or
 - (d) in the case of a verification of origin under this Act where an election to average has been made under the regulations made pursuant to section 13 of the *Customs Tariff*, such further time as may be prescribed, or
 - (e) where the Minister deems it advisable, within two years

after the time a marking determination was made in respect of the goods under section 57.01 or a determination or an appraisal was made in respect of the goods under section 58, redetermine the marking determination, re-determine the tariff classification or re-appraise the value for duty of the goods and, where the designated officer makes such a re-determination or re-appraisal, the designated officer shall immediately give notice of that decision to

- (f) the person who accounted for the goods under subsection 32(1), (3) or (5), the importer of the goods or the person who was the owner of the goods at the time of release, and
- (g) persons who are members of the prescribed class, in the case of a re-determination of a marking determination. S.C. 1992, c. 28, s. 13; 1993, c. 44, s. 92.
- **62.** (1) **Effect of re-determination or re-appraisal.**—Where a re-determination, other than a re-determination of a marking determination, or re-appraisal is made under section 60 or

61 in respect of goods, the person who was given notice of the decision thereunder shall, in accordance with the decision.

- (a) pay any additional amount owing as duties in respect of the goods or, where a request is made under section 63, give security satisfactory to the Minister in respect of that amount and any interest owing or that may become owing on that amount; or
- (b) be given a refund of any duties and interest paid (other than interest that was paid by reason of duties not being paid in accordance with subsection 32(5) or section 33) in excess of the duties and interest owing in respect of the goods.
- (2) When amounts owing or refund payable.—Any amount owing by or to a person under subsection (1) or 66(3) in respect of goods, other than an amount in respect of which security is given, is payable within thirty days after the day the person referred to in that subsection is given notice of the decision, whether or not a request is made under section 63.
- (3) **Review.**—A re-determination or a re-appraisal under section 60 or 61 is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by section 63 or 64. S.C. 1992, c. 28, s. 14; S.C. 1993, c. 44, s. 93.

Re-determination or Re-appraisal by Deputy Minister

63. (1) Request for further re-determination or re-appraisal.—Any person may,

- (a) within ninety days after the time the person was given an advance ruling under section 43.1, notice of a marking determination under section 57.01 or notice of a decision under section 60 or 61, or
- (b) where the Minister deems it advisable, within two years after the time an advance ruling was given under section 43.1, a marking determination was made under section 57.01 or a determination or appraisal was made under section 58,

request a review of the advance ruling, a re-determination of the marking determination, a further re-determination of the tariff classification or marking determination or a further reappraisal of the value for duty re-determined or re-appraised under section 60 or 61.

- (2) **Idem.**—A request under this section shall be made to the Deputy Minister in the prescribed manner and in the prescribed form containing the prescribed information.
- (3) **Decision.**—On receipt of a request under this section, the Deputy Minister shall, with all due dispatch, affirm, revise or reverse the advance ruling, re-determine the marking determination or tariff classification or re-appraise the value for duty as the case may be, and give notice of that decision to the person who made the request. S.C. 1993, c. 44, s. 94.
- **64. Re-determination or re-appraisal by Deputy Minister.**—The Deputy Minister may re-determine the tariff classification or marking determination or re-appraise the value for duty of imported goods
 - (a) in the case of a determination of a tariff classification or an appraisal of value for duty, within two years after the time the determination or appraisal was made under section 58, where the Minister deems it advisable,
 - (a.1) in the case of a marking determination, within two years after the time the determination was made under section 57.01, where the Minister deems it advisable,
 - (b) at any time after a re-determination or re-appraisal was made under subsection 63(3), but before an appeal under section 67 is heard, on the recommendation of the Attorney

General for Canada, where the re-determination or re-appraisal would reduce duties payable on the goods,

- (c) at any time, where the person who accounted for the goods under subsection 32(1), (3) or (5) or a person who was given notice of a marking determination under section 57.01 has failed to comply with any of the provisions of this Act or the regulations or has committed an offence under this Act in respect of the goods,
- (d) at any time, where the re-determination or re-appraisal would give effect to a decision of the Canadian International Trade Tribunal, the Federal Court or the Supreme Court of Canada made in respect of the goods, and
- (e) at any time, where the re-determination or re-appraisal would give effect in respect of the goods, in this paragraph referred to as the "subsequent goods", to a decision of the Canadian International Trade Tribunal, the Federal Court or the Supreme Court of Canada, or of the Deputy Minister under paragraph (b), made in respect of
 - (i) other like goods of the same importer or owner imported on or prior to the date of importation of the subsequent goods, where the decision relates to the tariff classification of those other goods, or
 - (ii) other goods of the same importer or owner imported on or prior to the date of importation of the subsequent goods, where the decision relates to the manner of determining the value for duty of those other goods,

and, where the Deputy Minister makes a re-determination or re-appraisal under this section, the Deputy Minister shall immediately give notice of that decision to the person who accounted for the goods under subsection 32(1), (3) or (5), the importer of the goods or the person who was the owner of the goods at the time of release, or, in the case of a redetermination of a marking determination under paragraph (a.1), to persons who are members of the prescribed class. R.S.C. 1985, c. 47 (4th Supp.), s. 52; S.C. 1992, c. 28, s. 15; S.C. 1993, c. 44, s. 95.

- **65.** (1) **Effect of re-determination or re-appraisal by Deputy Minister.**—Where a redetermination, other than a re-determination of a marking determination, or re-appraisal is made under section 63 or 64 in respect of goods, the person who is given notice of the decision thereunder shall, in accordance with the decision,
 - (a) pay any additional amount owing as duties in respect of the goods or, where an appeal is taken under section 67, give security satisfactory to the Minister in respect of that amount and any interest owing or that may become owing on that amount; or
 - (b) be given a refund of any duties and interest paid (other than interest that was paid by reason of duties not being paid in accordance with subsection 32(5) or section 33) in excess of the duties and interest owing in respect of the goods.
- (2) When amounts owing or refunds payable.—Any amount owing under subsection (1) in respect of goods, other than an amount in respect of which security is given, or any refund payable under that subsection is payable within ninety days after the time the person is given notice of the decision, whether or not an appeal is taken under section 67.
- (3) **Review.**—A re-determination or a re-appraisal under section 63 or 64 is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by section 67. S.C. 1992, c. 28, s. 16; S.C. 1993, c. 44, s. 96.
- **65.1** (1) **Refund to person other than payer.**—Where a person (in this subsection referred to as the "applicant") to whom a notice of a decision under section 60, 61, 63 or 64 was given would be entitled under paragraph 62(1)(b) or 65(1)(b) to a refund of an amount if the applicant had been the person who paid the amount, the amount may be paid to the

applicant and any amount so paid to the applicant shall be deemed to have been refunded to the applicant under that paragraph.

- (2) **Effect of refund.**—Where an amount in respect of goods has been refunded to a person under paragraph 62(1)(b) or 65(1)(b), no other person shall be entitled to a refund of an amount in respect of the goods under paragraph 62(1)(b) or 65(1)(b). S.C. 1992, c. 28, s. 17.
- **66.** (1) **Interest on payments.**—Where a person has paid an amount on account of duties expected to be owing under paragraph 58(2)(a), 62(1)(a) or 65(1)(a) and the amount so paid exceeds the amount of duties, if any, owing under that paragraph as a result of a determination, appraisal, re-determination or re-appraisal, the person shall be paid, in addition to the excess amount, interest at the prescribed rate for the period beginning on the first day after the day the amount was paid and ending on the day the determination, appraisal, re-determination or reappraisal, as the case may be, was made, calculated on the excess amount.
- (2) Interest where security given.—Where, as a result of a determination, appraisal, redetermination or re-appraisal made in respect of goods, a person is required under paragraph 58(2)(a), 62(1)(a) or 65(1)(a) to pay an amount owing as duties in respect of the goods and the person gives security under that paragraph pending a subsequent re-determination or reappraisal in respect of the goods, the interest payable under subsection 33.4(1) on any amount owing as a result of the subsequent re-determination or re-appraisal shall be computed at the prescribed rate rather than at the specified rate for the period beginning on the first day after the day the security was given and ending on the day the subsequent re-determination or reappraisal is made.
- (3) **Interest on refunds.**—Any person who is given a refund under paragraph 58(2)(b), 62(1)(b) or 65(1)(b) of an amount paid shall be given, in addition to the refund, interest at the prescribed rate for the period beginning on the first day after the day the amount was paid and ending on the day the refund is given, calculated on the amount of the refund. S.C. 1992, c. 28, s. 18.

Appeals and References

- **67.** (1) **Appeal to the Canadian International Trade Tribunal.**—A person who deems himself aggrieved by a decision of the Deputy Minister made pursuant to section 63 or 64 may appeal from the decision to the Canadian International Trade Tribunal by filing a notice of appeal in writing with the Deputy Minister and the Secretary of the Canadian International Trade Tribunal within ninety days after the time notice of the decision was given.
- (2) **Publication of notice of appeal.**—Before making a decision under this section, the Canadian International Trade Tribunal shall provide for a hearing and shall publish a notice thereof in the *Canada Gazette* at least twenty-one days prior to the day of the hearing, and any person who, on or before the day of the hearing, enters an appearance with the Secretary of the Canadian International Trade Tribunal may be heard on the appeal.
- (3) **Judicial review.**—On an appeal under subsection (1), the Canadian International Trade Tribunal may make such order, finding or declaration as the nature of the matter may require, and an order, finding or declaration made under this section is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by section 68. R.S.C. 1985, c. 47 (4th Supp.), s. 52.
- **68.** (1) **Appeal to Federal Court.**—Any of the parties to an appeal under section 67, namely,
 - (a) the person who appealed,

- (b) the Deputy Minister, or
- (c) any person who entered an appearance in accordance with subsection 67(2),
- may, with leave of a judge of the Federal Court, within ninety days after the date a decision is made under section 67, appeal therefrom to that Court on any question of law.
- (2) **Disposition of appeal.**—The Federal Court may dispose of an appeal by making such order or finding as the nature of the matter may require or by referring the matter back to the Canadian International Trade Tribunal for re-hearing. R.S.C. 1985, c. 47 (4th Supp.), s. 52.
- 69. (1) Refund pending appeal.—Where an appeal is taken under section 67 or 68 in respect of goods and the person who appeals has paid any amount as duties and interest in respect of the goods, the person shall, on giving security satisfactory to the Minister in respect of the unpaid portion of the duties and interest owing in respect of the goods and the whole or any portion of the amount paid as duties and interest (other than interest that was paid by reason of duties not being paid in accordance with subsection 32(5) or section 33) in respect of the goods, be given a refund of the whole or any portion of the amount paid in respect of which security is given.
- (2) Interest.—Where a refund is given under subsection (1), the person who is given the refund shall,
 - (a) if a re-determination or a re-appraisal is made by the Deputy Minister under paragraph 64(d) pursuant to which any portion of the amount refunded is owing as duties and interest, pay interest at the prescribed rate for the period beginning on the first day after the day the refund is given and ending on the day the amount of the refund found to be owing as duties and interest has been paid in full, calculated on the outstanding balance of that amount of the refund, except that where the amount of the refund found to be owing is paid within thirty days after the day the re-determination or re-appraisal is made, interest shall not be payable on the amount from that day to the day the amount is paid; or
 - (b) if a re-determination or re-appraisal is made by the Deputy Minister under paragraph 64(d) pursuant to which all or any portion of the amount refunded is not owing as duties and interest, be given interest at the prescribed rate for the period beginning on the day after the amount refunded was originally paid by that person and ending on the day it was refunded, calculated on the amount of the refund found not to be owing. R.S.C. 1985, c. 1 (4th Supp.), s. 45; S.C. 1992, c. 28, s. 19.
- **70.** (1) **References to Canadian International Trade Tribunal.**—The Deputy Minister may refer to the Canadian International Trade Tribunal for its opinion any questions relating to the tariff classification or value for duty of any goods or class of goods.
- (2) **Idem.**—Sections 67 and 68 apply in respect of a reference made pursuant to this section as if the reference were an appeal taken pursuant to section 67. R.S.C. 1985, c. 47 (4th Supp.), s. 52.

Special Provisions

- 71. (1) Special provisions for codes 9956 and 9957.—Where the release of goods has been refused on the ground that the goods have been determined to be prohibited goods as described in code 9956 or 9957 of Schedule VII to the *Customs Tariff*, re-determination may be requested under sections 60 and 63 or made under section 64 and appeals may be taken under sections 67 and 68 in respect of the determination, subject to the following modifications:
 - (a) paragraphs 64(d) and (e) shall be deemed to include a reference to the court; and

- (b) in sections 67 and 68, the expression "court" shall be deemed to be substituted for the expression "Canadian International Trade Tribunal" and the expression "clerk of the court" shall be deemed to be substituted for the expression "Secretary of the Canadian International Trade Tribunal".
- (2) **Definitions.**—In this section,
- "clerk of the court".—"clerk of the court" means the clerk of the Supreme Court, Ontario Court (General Division), Superior Court, Court of Queen's Bench or county or district court, as the case may be;
- "court".--"court" means
 - (a) in the Province of Ontario, the Ontario Court (General Division),
 - (b) in the Province of Quebec, the Superior Court,
 - (c) in the Provinces of Nova Scotia and British Columbia, the Yukon Territory and the Northwest Territories, the Supreme Court,
 - (d) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench, and
 - (e) [Repealed]
 - (f) in the Provinces of Prince Edward Island and Newfoundland, the Trial Division of the Supreme Court. R.S.C. 1985, c. 41 (3rd Supp.), s. 120; R.S.C. 1985, c. 47 (4th Supp.), s. 52; S.C. 1990, c. 16, s. 8; S.C. 1990, c. 17, s. 16; S.C. 1992, c. 1, s. 61; S.C. 1992, c. 51, s. 44; S.C. 1993, c. 28, s. 78.
- **72.** Limitation relating to security.—No security may be given under paragraph 58(2)(a), 62(1)(a) or 65(1)(a) or subsection 69(1) in respect of any amount owing as surtaxes levied under section 59, 59.1 or 60 of the *Customs Tariff*, temporary duties levied under section 60.1, 60.2, 60.3 or 60.4 of that Act or surcharges levied under section 61 of that Act. R.S.C. 1985, c. 41 (3rd Supp.), s. 121; S.C. 1988, c. 65, s. 71; S.C. 1993, c. 44, s. 97.
- **72.1** (1) **Request for re-determination where retroactive order.**—Notwithstanding paragraphs 60(1)(a) and (b), a request for a re-determination of the tariff classification of imported goods affected by a retroactive order of the Governor in Council made pursuant to sections 68 and 136 or 129 and 136 of the *Customs Tariff*, may be made under section 60 at any time before July 1, 1992.
- (2) **Previous re-determination not a bar.**—A designated officer may re-determine under subsection 60(3), and thereafter the Deputy Minister may further re-determine under subsection 63(3), the tariff classification of imported goods in order to give effect to a retroactive order of the Governor in Council referred to in subsection (1), notwithstanding any prior re-determination of the tariff classification of the goods. S.C. 1990, c. 36, s. 1.

PART IV

ABATEMENTS, REFUNDS, DRAWBACKS AND REMISSIONS

Abatements and Refunds

73. Abatement.—Subject to section 75 and any regulations made under section 81, the Minister may grant an abatement of the whole or part of the duties on imported goods where the goods have suffered

- (a) damage, deterioration or destruction at any time from the time of shipment to Canada to the time of release; or
- (b) a loss in volume or weight arising from natural causes while in a bonded warehouse.
- 74. (1) Refund.—Subject to this section, section 75 and any regulations made under section 81, the Minister may grant to any person who paid duties on imported goods pursuant to this Act a refund of the whole or part of the duties paid thereon where
 - (a) they have suffered damage, deterioration or destruction at any time from the time of shipment to Canada to the time of release;
 - (b) the quantity released is less than the quantity in respect of which duties were paid;
 - (c) they are of a quality inferior to that in respect of which duties were paid;
 - (c.1) notwithstanding paragraph (c.2), the goods were imported from a NAFTA country but no claim for preferential tariff treatment under NAFTA was made in respect of those goods at the time they are accounted for under subsection 32(1), (3) or (5);
 - (c.2) duties have been overpaid or paid in error on the goods for any reason, other than an erroneous determination as to the origin of goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed, an erroneous determination of tariff classification or an erroneous appraisal of value for duty; or
 - (d) duties have been overpaid or paid in error on the goods for any reason, other than an erroneous determination of tariff classification or erroneous appraisal of value for duty or an erroneous determination as to the origin of goods imported from the United States.
- (1.1) No request under subsection 60(1).—For greater certainty, where the circumstances described in paragraph (1)(c.1) exist, a request for a re-determination of origin may not be made under subsection 60(1) as applied by subsection 57.2(3.1).
- (1.2) **Suspension.**—The operation of paragraph (1)(d) is suspended during the period in which paragraphs (1)(c.1) and (c.2) are in force.
- (2) Claims for refund.—No refund shall be granted under paragraphs (1)(a) to (c) in respect of a claim unless written notice of the claim and the reason therefor is given to an officer within the prescribed time.
 - (3) **Idem.**—No refund shall be granted under subsection (1) in respect of a claim unless
 - (a) the person making the claim affords an officer reasonable opportunity to examine the goods in respect of which the claim is made or otherwise verify the reason for the claim; and
 - (b) an application for the refund, including such evidence in support of the application as may be prescribed, is made to an officer in the prescribed manner and in the prescribed form containing the prescribed information within
 - (i) in the case of an application for a refund under paragraph (1)(a), (b), (c), (c.2) or (d), two years after the goods are accounted for under subsection 32(1), (3) or (5), and
 - (ii) in the case of an application for a refund under paragraph (1)(c.1), one year after the goods are accounted for under subsection 32(1), (3) or (5).
- (4) Effect of denial of refund under paragraph (1)(c.1).—A denial of an application for a refund under paragraph (1)(c.1) on the ground that the goods on which the claimant has paid duties are not eligible for preferential tariff treatment under NAFTA because the goods are not eligible for such tariff treatment under the regulations made pursuant to section 13 of the Customs Tariff at the time they are accounted for under subsection 32(1), (3) or (5) of this Act

shall, for the purposes of this Act, be treated as if it were a re-determination of origin under subsection 60(3) as applied by subsection 57.2(3.1).

- (5) **Idem.**—For greater certainty, a denial of an application for a refund under paragraph (1)(c.1) on the basis that complete or accurate documentation has not been provided or on any ground other than the ground specified in subsection (4) shall not, for the purposes of this Act, be treated as if it were a re-determination of origin under this Act.
- (6) **Effect of granting of refund under paragraph** (1)(c.1).—The granting of a refund under paragraph (1)(c.1) shall, for the purposes of this Act, be treated in the same manner as if it were a re-determination of origin under subsection 60(3) as applied by subsection 57.2(3.1). S.C. 1988, c. 65, s. 72; S.C. 1993, c. 44, s. 98.
- **74.1 Refund where retroactive order.**—The Minister may grant a refund of duties under paragraph 74(1)(d) in respect of imported goods on which the customs duties are reduced or removed by a retroactive order of the Governor in Council made pursuant to sections 68 and 136 or 129 and 136 of the *Customs Tariff* if, notwithstanding the limitation period described in paragraph 74(3)(b), an application for the refund is made before July 1, 1992. S.C. 1990, c. 36, s. 2.
- **75.** (1) **Amount of abatement or refund.**—Subject to sections 78 and 79, the amount of any abatement or refund granted under section 73 or 74 shall be determined in accordance with such regulations as the Governor in Council may make prescribing the methods of determining the amount and the classes of cases to which such determinations apply.
- (2) Alternative rule for case of deficiency.—Where the quantity of imported goods released is less than the quantity in respect of which duties were paid and no refund of duties has been granted in respect of the deficient quantity, an officer may, in such circumstances as may be prescribed and at the request of the person by whom the duties were paid, apply any duties paid in respect of the deficient quantity of the goods to any duties that become due on the deficient quantity if any portion thereof is subsequently imported by the same importer or owner.
- **76.** (1) **Refunds for defective goods.**—Subject to any regulations made under section 81, the Minister may, in such circumstances as may be prescribed, grant to any person by whom duties were paid on imported goods that are defective, are of a quality inferior to that in respect of which duties were paid or are not the goods ordered, a refund of the whole or part of the duties paid thereon if the goods have, subsequently to the importation, been disposed of in a manner acceptable to the Minister at no expense to Her Majesty in right of Canada or exported.
- (2) Subsections 74(2) and (3) and 75(1) apply.—Subsections 74(2) and (3) and 75(1) apply, with such modifications as the circumstances require, in respect of refunds under this section.
- 77. (1) **Refund on diverted goods.**—Subject to this section, where duties have been paid on imported goods and before any use is made of the goods in Canada other than by their incorporation into other goods the goods or the other goods into which they have been incorporated are
 - (a) sold or otherwise disposed of to a person who would have been entitled to obtain release of the goods free of duty or at a reduced rate of duty, or
 - (b) diverted to a use that would have entitled a person to obtain release of the goods free of duty or at a reduced rate of duty,

the Minister may make a refund to the person by whom the duties were paid, in an amount equal to the difference between the duties paid thereon and the duties, if any, that would have

been payable on the goods if at the time the goods were released they had been released to the person to whom they were sold or otherwise disposed of or released for the use to which they were diverted.

- (2) Certain duties not included.—For the purposes of subsection (1), "duties" does not include duties or taxes levied under the Excise Tax Act, the Excise Act or the Special Import Measures Act.
- (3) Application for refunds.—No refund shall be granted under this section unless an application for the refund supported by such evidence as the Minister may require, is made to an officer in the prescribed manner and in the prescribed form containing the prescribed information within two years after the goods are accounted for pursuant to subsection 32(1), (3) or (5).
- 78. Merchantable scrap, waste or by-products.—In such circumstances as may be prescribed, where merchantable scrap, waste or by-products result from the destruction or disposal of goods or from the incorporation of goods into other goods, the amount of any abatement or refund that is granted in respect of such goods under this Act by virtue of the destruction, disposal or incorporation into other goods shall be reduced by an amount determined in the prescribed manner. S.C. 1992, c. 1, s. 144.
- 79. Sum in lieu of refund or abatement.—Where circumstances exist that render it difficult to determine the exact amount of any abatement or refund that should be granted in respect of goods under this Act, the Minister may, with the consent of the person claiming the abatement or refund, grant to that person, in lieu thereof, a specific sum, the amount of which shall be determined by the Minister.
- **79.1** Certain duties not included.—For the purposes of sections 78 and 79, an abatement or refund does not include a rebate or refund of any amount paid in respect of tax levied under Part IX of the *Excise Tax Act*. S.C. 1990, c. 45, s. 20.
- **80.** (1) **Interest on refunds.**—Any person who is granted a refund of duties (other than amounts in respect of duty levied under the *Special Import Measures Act*) under section 74, 76, 77 or 79 shall be granted, in addition to the refund, interest on the refund at the prescribed rate for the period beginning on the ninety-first day after the day an application for the refund is received in accordance with paragraph 74(3)(b) or subsection 77(3), as the case may be, and ending on the day the refund is granted.
- (2) **Idem.**—Any person who is granted a refund under section 74, 76 or 79 of an amount in respect of duty levied under the *Special Import Measures Act* shall be granted, in addition to the refund, interest on the refund at the prescribed rate in respect of each month or fraction of a month in the period beginning on the ninety-first day after the day an application for the refund is received in accordance with paragraph 74(3)(b) and ending on the day the refund is granted. S.C. 1992, c. 28, s. 20.
- **80.1** (1) **Interest on past refunds.**—Notwithstanding subsection 80(1), any person who, under paragraph 74(1)(d), is granted a refund of duties on imported goods on which the customs duties are reduced or removed by a retroactive order of the Governor in Council made pursuant to sections 68 and 136 or 129 and 136 of the *Customs Tariff* shall be granted, in addition to the refund, interest at the prescribed rate for the period beginning on the day after the day the duties were paid and ending on the day the refund is granted, calculated on the amount of the refund.
- (2) **Interest on past refunds.**—Any person who, before the coming into force of this section, was granted a refund under paragraph 74(1)(d) of duties on imported goods on which the customs duties are reduced or removed by a retroactive order of the Governor in Council

referred to in subsection (1) shall be granted interest on the refund in an amount calculated in the manner set out in that subsection, less any interest already granted on the refund. S.C. 1990, c. 36, s. 3; S.C. 1992, c. 28, s. 21.

81. Regulations.—The Governor in Council may make regulations prescribing the circumstances in which abatements or refunds shall not be granted under this Act in respect of prescribed classes of goods.

Drawbacks

- **82.** (1) **Drawback for goods exported.**—Subject to this section, sections 83, 85.01, 85.02, 85.03 and 85.1 and any regulations made under section 85, the Minister may, in such circumstances and subject to such conditions as may be prescribed, grant a drawback of duties paid in respect of
 - (a) imported goods subsequently exported;
 - (b) imported goods used in, wrought into or attached to goods manufactured or produced in Canada and subsequently exported;
 - (c) imported materials, other than fuel or plant equipment, directly consumed or expended in the manufacture or production in Canada of goods subsequently exported;
 - (d) imported goods, where the same quantity of domestic or imported goods of the same class is used in, wrought into or attached to goods manufactured or produced in Canada and subsequently exported; or
 - (e) imported materials, other than fuel or plant equipment, where the same quantity of domestic or imported materials of the same class is directly consumed or expended in the manufacture or production in Canada of goods subsequently exported.
- (1.1) **No drawback for tobacco products.**—No drawback of the duties levied on tobacco products under the *Excise Tax Act* or section 20 of the *Customs Tariff* shall be granted under subsection (1).
- (2) **Deemed exportation.**—For the purposes of subsection (1), goods shall be deemed to have been exported if they are
 - (a) placed in a bonded warehouse or duty free shop for exportation;
 - (b) supplied for exportation to such department or agency of, or corporation owned, controlled or operated by, the Government of Canada or the government of a province as may be prescribed;
 - (c) designated as ships' stores by regulations made under paragraph 164(1)(c) and supplied for use on board a conveyance in accordance with the regulations made thereunder;
 - (d) used for the equipment, repair or reconstruction of ships or aircraft within such class of ships or aircraft as may be prescribed;
 - (e) delivered to telegraph cable ships proceeding on ocean voyages for use in the laying or repairing of oceanic telegraph cables outside Canada;
 - (f) placed in a bonded warehouse for use in accordance with paragraph (c) or (e); or
 - (g) used or destined for use in such other manner as may be prescribed.
- (3) **Application for drawback.**—An application for a drawback under this section shall be made within the prescribed time, in the prescribed manner and in the prescribed form containing the prescribed information.

- (4) Evidence.—No drawback shall be granted under this section unless the person applying for the drawback provides such evidence in support of his application as the Minister may require. S.C. 1988, c. 65, s. 73; S.C. 1993, c. 25, s. 72; S.C. 1993, c. 44, s. 99.
- **83. Merchantable scrap, waste or by-products.**—The amount of a drawback that is granted under section 82 shall be reduced by an amount determined in such manner as may be prescribed, where
 - (a) the drawback is granted in respect of
 - (i) goods used in, wrought into or attached to goods manufactured or produced in Canada, or
 - (ii) materials consumed or expended in the manufacture or production of goods; and
 - (b) merchantable scrap, waste or by-products result from a process referred to in subparagraph (a)(i) or (ii).
- **84.** (1) **Diversions.**—Where a drawback has been granted in respect of imported goods by reason of a deemed exportation under subsection 82(2) and the goods are not subsequently exported and are diverted to a use other than a use specified in subsection 82(2), the person who diverted the goods
 - (a) shall, within thirty days after the time of the diversion, report the diversion to an officer at a customs office; and
 - (b) is, from the time of the diversion, liable to repay the amount of the drawback and the amount of any interest that was granted on the drawback under subsection 87(1) or (2).
- (1.01) Suspension of subsection (1.1).—The operation of subsection (1.1) is suspended during the period in which section 85.01 is in force.
- (1.1) Exports to U.S..—Where a drawback has been granted in respect of imported goods by reason of a deemed exportation of goods under subsection 82(2), the goods deemed to be exported are exported to the United States on or after January 1, 1994 or such later date as is, before January 1, 1994, fixed by order of the Governor in Council pursuant to any agreement between the Government of Canada and the Government of the United States relating, either generally or specifically, to the application of this subsection and, at the time of exportation of the goods to the United States, such a drawback was prohibited under section 85.1,
 - (a) the person who exported the goods shall, within thirty days after the exportation of the goods to the United States, report their exportation to an officer at a customs office; and
 - (b) the person who exported the goods and the person to whom the drawback was granted are, from the time of the exportation of the goods to the United States, jointly and severally liable to repay the amount of the drawback and the amount of any interest that was granted on the drawback under subsection 87(1) or (2).
- (1.2) **Penalty for failure to report.**—Any person who fails to report a diversion or exportation as required by paragraph (1)(a) or (1.1)(a) is liable to pay a penalty of 6% per year of an amount equal to the duties that would, but for section 82, be payable on the goods for the period beginning on the first day after the period within which the report was required by that paragraph to be made and ending on the day the report is made.
- (2) Interest on amount owing.—A person who is liable under subsection (1) or (1.1) to repay the amount of a drawback and the amount of any interest shall pay, in addition to those amounts, interest at the specified rate for the period beginning on the first day after the day the drawback was granted and ending on the day those amounts have been repaid in full, calculated on the outstanding balance of the amounts.

- (3) **Certain duties not included.**—An amount on which a penalty or interest is calculated under subsection (1.2) or (2) shall not include any amount in respect of duty levied under the *Special Import Measures Act*.
- (4) Computation of interest on certain duties.—A person who is liable under subsection (1) or (1.1) to repay the amount of a drawback in respect of duty levied under the *Special Import Measures Act* and the amount of any interest on the drawback shall pay, in addition to those amounts, interest at the prescribed rate in respect of each month or fraction of a month in the period beginning on the first day after the day the drawback was granted and ending on the day those amounts have been repaid in full, calculated on the outstanding balance of the amounts. S.C. 1988, c. 65, s. 74; S.C. 1992, c. 28, s. 22; S.C. 1993, c. 44, s. 100.
 - 85. (1) Regulations.—The Governor in Council may make regulations prescribing
 - (a) the circumstances in which, and the classes of goods in respect of which, no drawback of duties levied under the *Special Import Measures Act*, surtax levied under section 59, 59.1 or 60 of the *Customs Tariff*, temporary duty levied under section 60.1, 60.11, 60.2, 60.3 or 60.4 of that Act, surcharge levied under section 61 of that Act, tax levied under the *Excise Tax Act* or duty levied under the *Excise Act* may be granted under section 82;
 - (b) the proportion of the duties paid that may be granted as a drawback under section 82;
 - (c) the classes of persons who may claim a drawback under section 82 and the evidence of entitlement that must be given; and
 - (d) what goods are to be considered to be of the same class for the purpose of paragraph 82(1)(d) and what materials are to be considered to be of the same class for the purpose of paragraph 82(1)(e).
- (2) **Certain duties not included.**—For the purposes of paragraph (1)(a), tax levied under the *Excise Tax Act* does not include tax levied under Part IX of that Act. R.S.C. 1985, c. 41 (3rd Supp.), s. 122; S.C. 1988, c. 65, s. 75; S.C. 1990, c. 45, s. 21; S.C. 1993, c. 44, s. 101.
- **85.01** (1) **Definition of "duties".**—In this section, "duties" means any duties levied on imported goods under the *Customs Tariff*, except under section 20 of that Act, and does not include any duties or taxes levied on imported goods under the *Excise Tax Act*, the *Excise Act*, the *Special Import Measures Act* or any other law relating to customs.
- (2) **Maximum drawback.**—A drawback granted under subsection 82(1) of duties paid in respect of imported goods, where the subsequent exportation of goods is to the United States on or after January 1, 1996, to Mexico on or after January 1, 2001, or to any other NAFTA country on or after such date as may be fixed by order of the Governor in Council, may not exceed the lesser of
 - (a) the amount of duties paid or owed in respect of the imported goods at the time of importation, and
 - (b) the amount of duties paid to the NAFTA country to which goods were subsequently exported. S.C. 1993, c. 44, s. 102.
- **85.02** No drawback of SIMA duties where goods exported to a NAFTA country.—No drawback may be granted under subsection 82(1) of duties paid under the *Special Import Measures Act* on imported goods where there is a subsequent exportation of goods to the United States on or after January 1, 1996, to Mexico on or after January 1, 2001, or to any other NAFTA country on or after such date as may be fixed by order of the Governor in Council. S.C. 1993, c. 44, s. 102.
 - 85.03 (1) Meaning of "identical or similar goods", etc. —In this section, "identical or

similar goods" and "used" have the meanings assigned to those expressions by paragraph 9 of Article 303 of NAFTA.

- (2) **Definition of "materials".**—In this section, "materials" means goods that are used in the production of other goods, and includes parts or ingredients.
- (3) When drawback may be granted.—Notwithstanding sections 85.01 and 85.02 but subject to this section, a drawback may be granted under subsection 82(1) of duties paid in respect of
 - (a) imported goods subsequently exported in the condition in which they were imported;
 - (b) imported goods or materials referred to in any of paragraphs 82(1)(a) to (e), where the goods subsequently exported are deemed under subsection 82(2) to have been exported by reason of their having been
 - (i) placed in a duty free shop for exportation,
 - (ii) designated as ships' stores by regulations made pursuant to paragraph 164(1)(c),
 - (iii) supplied for use on board a conveyance prescribed by regulations made pursuant to paragraph 164(1)(i), or
 - (iv) used, in a manner prescribed under paragraph 82(2)(g), solely and exclusively in conjunction with a project undertaken jointly by the Government of Canada and the government of the NAFTA country or a project in Canada undertaken by the government of the NAFTA country and destined to become the property of the government of the NAFTA country;
 - (c) imported goods eligible for preferential tariff treatment under NAFTA that are
 - (i) subsequently exported to a NAFTA country,
 - (ii) used as materials in the production of goods that are subsequently exported to a NAFTA country, or
 - (iii) substituted by identical or similar goods used as materials in the production of other goods that are subsequently exported to a NAFTA country;
 - (d) imported orange or grapefruit concentrates used in the manufacture or production of exported orange or grapefruit products described under heading No. 20.09 in Schedule I to the *Customs Tariff* that are exported to the United States;
 - (e) imported goods used as materials to make apparel that is subsequently exported to the United States and subject to the Most-Favoured Nation Tariff in accordance with the laws of that country, or imported goods substituted by identical or similar goods used as materials to make such apparel;
 - (f) imported goods used as materials in the production of, or substituted by identical or similar goods used as materials in the production of, quilted cotton piece goods and quilted manmade piece goods provided for under subheading No. 5811.00 of Schedule I to the *Customs Tariff* and furniture moving pads provided for under subheading No. 6307.90 of that Schedule that are exported to the United States and are subject to the Most-Favoured Nation Tariff in accordance with the laws of that country; or
 - (g) such other goods or materials or classes of goods or materials as the Governor in Council may, by order, specify, pursuant to any agreement between the Government of Canada and the government of another NAFTA country relating, either generally or specifically, to the application of this section.
 - (4) No drawback on certain goods.—A drawback may not be granted under subsection

- 82(1) of duties paid in respect of goods referred to in paragraph 8 of Article 303 of NAFTA. S.C. 1993, c. 44, s. 102.
- **85.04** Suspension of section **85.1.**—The operation of section 85.1 is suspended during the period in which sections 85.01 to 85.03 are in force. S.C. 1993, c. 44, s. 102.
- **85.1** (1) **Definition of "duties".**—In this section, "duties" means any duties levied on imported goods under the *Customs Tariff*, except under section 20 thereof, or the *Special Import Measures Act*, and does not include any duties or taxes levied on imported goods under the *Excise Tax Act*, the *Excise Act* or any other law relating to customs.
- (2) No drawback for goods exported to U.S.—No drawback may be granted under section 82 of duties paid in respect of imported goods where the subsequent exportation of goods is to the United States and takes place on or after January 1, 1994 or such later date as is, before January 1, 1994, fixed by order of the Governor in Council pursuant to any agreement between the Government of Canada and the Government of the United States relating, either generally or specifically, to the application of this subsection.
- (3) Exceptions.—Notwithstanding subsection (2), a drawback may be granted under section 82 of duties paid in respect of
 - (a) imported goods subsequently exported in the condition in which they were imported;
 - (b) imported goods or materials referred to in any of paragraphs 82(1)(a) to (e), where the goods subsequently exported are deemed under subsection 82(2) to have been exported by reason of their having been
 - (i) placed in a duty free shop for exportation,
 - (ii) designated as ships' stores by regulations made under paragraph 164(1)(c) and supplied for use on board a conveyance in accordance with the regulations made thereunder, or
 - (iii) used, in accordance with any regulations made pursuant to paragraph 82(2)(g), solely and exclusively in conjunction with a project undertaken jointly by the Government of Canada and the Government of the United States or a project in Canada undertaken by the Government of the United States and destined to become the property of the Government of the United States;
 - (c) imported goods entitled under the *Customs Tariff* to the benefit of the United States Tariff;
 - (d) imported orange or grapefruit concentrates used in the manufacture or production of exported orange or grapefruit products described under heading No. 20.09 in Schedule I to the *Customs Tariff*;
 - (e) imported fabric that is made into apparel that, when imported into the United States, is subject to the Most-Favoured-Nation Tariff in accordance with the laws of that country; or
 - (f) such other goods or materials, or classes thereof, as may, by order, be specified by the Governor in Council pursuant to any agreement between the Government of Canada and the Government of the United States relating, either generally or specifically, to the application of this subsection. S.C. 1988, c. 65, s. 76.
- **86.** Sum in lieu of drawback or remission.—Where circumstances exist that render it difficult to determine the exact amount of a drawback that should be granted in respect of goods under this Act or the *Customs Tariff*, or the exact amount of a general remission of duties that should be granted in respect of any particular goods pursuant to subsection 23(2) of the *Financial Administration Act*, the Minister may, with the consent of the person applying for the

drawback or remission, grant to that person, in lieu thereof, a specific sum, the amount of which shall be determined by the Minister.

- **87.** (1) **Interest on drawbacks.**—Any person who is granted a draw-back of duties (other than amounts in respect of duty levied under the *Special Import Measures Act*) under section 82 or 86 shall be granted, in addition to the drawback, interest thereon at the prescribed rate for the period beginning on the ninety-first day after an application for the drawback is received in accordance with subsection 82(3) and ending on the day the drawback is granted.
- (2) **Idem.**—Any person who is granted a drawback of an amount in respect of duty levied under the *Special Import Measures Act*, shall be granted, in addition to the drawback, interest on the drawback at the prescribed rate in respect of each month or fraction of a month in the period beginning on the ninety-first day after the day an application for the drawback is received in accordance with subsection 82(3) and ending on the day the drawback is granted. S.C. 1992, c. 28, s. 23.

Diversions

- **88.** (1) **Duties on goods sold.**—Subject to any regulations made under section 94, where imported goods have been released free of duty or at a reduced rate of duty and are sold or otherwise disposed of to a person who was not entitled to any or as great an exemption, the person who purchased or otherwise acquired the goods and the person who sold or otherwise disposed of the goods
 - (a) shall, within ninety days after the time of the sale or other disposition, report the sale or other disposition to an officer at a customs office and account for the goods in the prescribed manner and in the prescribed form containing the prescribed information; and
 - (b) are, from the time of the sale or other disposition, jointly and severally liable to pay as duties or additional duties on the goods an amount equal to the amount of duties that would be payable on like goods imported in like condition at the time of the sale or other disposition at a rate of duty equal to
 - (i) the rate of duty applicable to like goods at the time of the sale or other disposition, minus
 - (ii) the rate of duty applied in calculating the duties, if any, already paid in respect of the goods.
- (2) Rate determined by the Minister.—Where duties or additional duties are owing under subsection (1) in respect of imported goods that at the time the goods were released were the property of a country other than Canada and were subsequently sold or otherwise disposed of on behalf of the government of that country in accordance with an agreement between the government of that country and the Government of Canada, the Minister may determine a rate of duty, which rate shall, for the purpose of calculating the amount of duties or additional duties owing under that subsection in respect of the goods, be deemed to be the rate of duty applicable to like goods at the time of the sale or other disposition.
- **89.** (1) **Duties on goods diverted to other use.**—Subject to any regulation made under section 94, where imported goods have been released free of duty or at a reduced rate of duty and are diverted to a use other than that for which they were released, the person who diverted the goods
 - (a) shall, within ninety days after the time of the diversion, report the diversion to an officer at a customs office and account for the goods in the prescribed manner and in the prescribed form containing the prescribed information; and

- (b) is, from the time of the diversion, liable to pay as duties or additional duties on the goods an amount equal to the amount of duties that would be payable on like goods imported in like condition at the time of the diversion at a rate of duty equal to
- (i) the rate of duty applicable to like goods at the time of the diversion, minus
 - (ii) the rate of duty applied in calculating the duties, if any, already paid in respect of the goods.
- (2) **Ships' stores.**—Subject to subsection (3), subsection (1) applies in respect of goods removed as ships' stores from a customs office, sufferance warehouse or bonded warehouse under paragraph 19(1)(c) or (2)(c) as if the goods were released free of duty at the time they were so removed.
- (3) **Tobacco products removed as ships' shores.**—Subsection (1) does not apply in respect of tobacco products removed as ships' stores from a customs office, sufferance warehouse or bonded warehouse under paragraph 19(1)c) or (2)(c).
- (4) **Diversion of tobacco products removed as ships' stores.**—Where tobacco products have been removed as ships' stores from a customs office, sufferance warehouse or bonded warehouse under paragraph 19(1)(c) or (2)(c) and the tobacco products are diverted to another use, the person who diverted the tobacco products
 - (a) shall, at the time of the diversion, report the diversion to an officer at a customs office and account for the tobacco products in the prescribed manner and in the prescribed form containing the prescribed information; and
 - (b) is, from the time of the diversion, liable to pay as duties on the tobacco products an amount equal to the amount of duties that would be payable on like tobacco products imported in like condition at the time of the diversion at a rate of duty applicable to like tobacco products at the time of the diversion. S.C. 1993, c. 25, s. 77.
- **90. Certain duties not included.**—For the purposes of section 88 and subsection 89(1), "duties" does not include duties or taxes levied under the *Excise Tax Act*, the *Excise Act* or the *Special Import Measures Act*. S.C. 1993, c. 25, s. 78.
- **91. Refunds.** —Sections 88 and 89 apply with respect to goods in respect of which a refund has been granted under section 77 as if
 - (a) the goods were released free of duty or at a reduced rate of duty at the time the refund was paid; and
 - (b) the rate of duty, if any, applicable to like goods at the time of the sale or other disposition or of the diversion, as the case may be, that resulted in the refund made in respect of the goods under section 77 were the rate of duty referred to in subparagraph 88(1)(b)(ii) or 89(1)(b)(ii).
- **92. Duties where remission granted.**—Subject to any regulations made under section 94, where a total or partial remission of duties has been granted in respect of imported goods subject to a condition and the condition is not complied with, the person who received the remission
 - (a) shall, within ninety days after the time of the failure to comply with the condition, report the failure to an officer at a customs office and account for the goods in the prescribed manner and in the prescribed form containing the prescribed information; and
 - (b) is, from the time of the failure to comply with the condition, liable to pay as duties or additional duties on the goods an amount equal to the amount by which

(i) the amount of the duties that would be payable on like goods released in like condition at the rate applicable to such goods at the time of the failure to comply with the condition

exceeds

- (ii) the amount of duties, if any, that were paid in respect of the goods and were not subsequently remitted.
- 93. (1) Interest on amounts owing.—Any person who is liable under section 88, 89, 91 or 92 to pay an amount of duties or additional duties shall pay, in addition to the amount, interest at the specified rate for the period beginning on the first day after the day the person became liable to pay the amount and ending on the day the amount has been paid in full, calculated on the outstanding balance of the amount.
- (2) **Idem.**—Where a person pays the total amount of duties, or additional duties, owing under section 88, 89, 91 or 92 within ninety days after the day the person became liable to pay the amount, interest on the amount shall not be payable by the person under subsection (1).
- (3) Penalty for failure to report.—Any person who fails to make a report in respect of goods as required by paragraph 88(1)(a), 89(1)(a), or 92 (a) within the time set out in that paragraph is liable to pay a penalty of 6% per year of an amount equal to the duties or additional duties payable on the goods under paragraph 88(1)(b), 89(1)(b) or 92(b), as the case may be, for the period beginning on the first day after the time within which the report was so required to be made and ending on the day the report is made.
- (4) Certain duties not included.—For the purposes of subsections (1) and (3), an amount of duties or additional duties does not include any amount in respect of duty levied under the *Special Import Measures Act*.
- (5) Computation of interest on certain duties.—A person who is liable under section 88, 89, 91 or 92 to pay an amount in respect of duty levied under the *Special Import Measures Act* shall pay, in addition to that amount, interest at the prescribed rate in respect of each month or fraction of a month in the period beginning on the ninety-first day after the day the duties or additional duties became payable and ending on the day the amount has been paid in full, calculated on the outstanding balance of the amount. S.C. 1992, c. 28, s. 24; S.C. 1993, c. 25, s. 79.
 - 94. Regulations.—The Governor in Council may make regulations prescribing
 - (a) time limits for the application of sections 88 to 92 and the classes of goods in respect of which, or the circumstances in which, such limits shall apply; and
 - (b) the circumstances in which certain goods would be exempted from the operation of those sections, and the classes of goods in respect of which, the length of time for which and the conditions under which such exemptions shall apply.

PART V

EXPORTATION

- **95.** (1) **Report.**—Subject to paragraph (2)(a), all goods that are exported shall be reported at such time and place and in such manner as may be prescribed.
 - (2) Regulations.—The Governor in Council may prescribe
 - (a) the classes of goods that are exempted from the requirements of subsection (1) and the circumstances in which any of those classes of goods are not so exempted; and

- (b) the classes of persons who are required to report goods under subsection (1) and the circumstances in which they are so required.
- (3) **Obligation to answer questions and present goods.**—Every person reporting goods under subsection (1) shall
 - (a) answer truthfully any question asked by an officer with respect to the goods; and
 - (b) where an officer so requests, present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part thereof, or open or unpack any package or container that the officer wishes to examine.
- (4) **Written report.**—Where goods are required by the regulations to be reported under subsection (1) in writing, they shall be reported in the prescribed form containing the prescribed information or in such form containing such information as is satisfactory to the Minister.
- **95.1** (1) **Statistics.**—Subject to this section, every person who reports goods under subsection 95(1) shall, at the time of reporting, furnish an officer at a customs office with the statistical code for the goods determined by reference to the Coding System established pursuant to section 22.1 of the *Statistics Act*.
- (2) **Prescribed form.**—The statistical code referred to in subsection (1) shall be furnished in the prescribed manner and in the prescribed form containing the prescribed information.
- (3) **Regulations.**—The Governor in Council may make regulations exempting persons or goods, or classes thereof, from the requirements of subsection (1) subject to such conditions, if any, as are specified in the regulations. S.C. 1988, c. 65, s. 77.
- **96.** Failure to export.—Where goods are reported under section 95 and not duly exported, the person who reported them shall forthwith report the failure to export them to an officer at a customs office.
- **97. Security.**—In such circumstances as may be prescribed, goods that are transported within Canada after they have been reported under section 95 shall be transported subject to such conditions and subject to such bonds or other security as may be prescribed.
- **97.01** (1) **Certificate of origin of goods exported to NAFTA country.**—Every exporter of goods to a NAFTA country for which tariff treatment under NAFTA will be claimed in accordance with the laws of that country shall certify in writing in the prescribed form and containing the prescribed information that goods exported or to be exported from Canada to a NAFTA country meet the rules of origin set out in, or contemplated by, NAFTA and, where the exporter is not the producer of the goods, the certificate shall be completed and signed by the exporter on the basis of the prescribed criteria.
- (2) **Provision of copy of Certificate of Origin.**—Every exporter or producer of goods who, for the purpose of enabling any person to comply with the laws of a NAFTA country relating to customs, completes and signs a certificate in accordance with subsection (1) shall, at the request of an officer, provide the officer with a copy of the certificate.
- (3) **Notification of correct information.**—Any person who has completed and signed a certificate in accordance with subsection (1) and who has reason to believe that it contains incorrect information shall immediately notify all persons to whom the certificate was given of the correct information.
- (4) **Suspension of section 97.1.**—The operation of section 97.1 is suspended during the period in which this section is in force. S.C. 1993, c. 44, s. 103.

- 97.1 Certificate of origin of goods exported to U.S.—Every person who, for the purpose of enabling any person to comply with the laws of the United States relating to customs, certifies in writing that goods exported, or to be exported, to the United States meet rules of origin set out in, or contemplated by, the Canada-United States Free Trade Agreement or certifies in writing to like effect shall, on the request of an officer, provide the officer with a copy of the certificate. S.C. 1988, c. 65, s. 78.
- 97.2 (1) Exporters' or producers' records.—Every person who exports goods or causes them to be exported for sale or for any industrial, occupational, commercial, institutional or other like use or any other use that may be prescribed and every other person who has completed and signed a certificate in accordance with subsection 97.01(1) shall keep at the place of business in Canada of that person or at such other place in Canada as may be designated by the Minister such records in respect of such goods in such manner and for such period of time as may be prescribed and shall, where an officer so requests, make them available to the officer and answer truthfully any questions asked by the officer in respect of the record.
- (2) **Idem.**—Subsection 40(2) and sections 42 and 43 apply, with such modifications as the circumstances require, to a person required to keep records pursuant to subsection (1). S.C. 1988, c. 65, s. 78; S.C. 1993, c. 44, s. 104.

PART VI

ENFORCEMENT

Powers of Officers

- 98. (1) Search of the person.—An officer may search
- (a) any person who has arrived in Canada, within a reasonable time after his arrival in Canada.
- (b) any person who is about to leave Canada, at any time prior to his departure, or
- (c) any person who has had access to an area designated for use by persons about to leave Canada and who leaves the area but does not leave Canada, within a reasonable time after he leaves the area.

if the officer suspects on reasonable grounds that the person has secreted on or about his person anything in respect of which this Act has been or might be contravened, anything that would afford evidence with respect to a contravention of this Act or any goods the importation or exportation of which is prohibited, controlled or regulated under this or any other Act of Parliament.

- (2) **Person taken before senior officer.**—An officer who is about to search a person under this section shall, on the request of that person, forthwith take him before the senior officer at the place where the search is to take place.
- (3) **Idem.**—A senior officer before whom a person is taken pursuant to subsection (2) shall, if he sees no reasonable grounds for the search, discharge the person or, if he believes otherwise, direct that the person be searched.
- (4) Search by same sex.—No person shall be searched under this section by a person who is not of the same sex, and if there is no officer of the same sex at the place at which the search is to take place, an officer may authorize any suitable person of the same sex to perform the search.

99. (1) Examination of goods.—An officer may

- (a) at any time up to the time of release, examine any goods that have been imported and open or cause to be opened any package or container of imported goods and take samples of imported goods in reasonable amounts;
- (b) at any time up to the time of release, examine any mail that has been imported and, subject to this section, open or cause to be opened any such mail that he suspects on reasonable grounds contains any goods referred to in the *Customs Tariff*, or any goods the importation of which is prohibited, controlled or regulated under any other Act of Parliament, and take samples of anything contained in such mail in reasonable amounts;
- (c) at any time up to the time of exportation, examine any goods that have been reported under section 95 and open or cause to be opened any package or container of such goods and take samples of such goods in reasonable amounts;
- (d) where the officer suspects on reasonable grounds that an error has been made in the tariff classification, value for duty or quantity of any goods accounted for under section 32, or where a refund or drawback is requested in respect of any goods under this Act or pursuant to the *Customs Tariff*, examine the goods and take samples thereof in reasonable amounts;
- (d.1) where the officer suspects on reasonable grounds that an error has been made with respect to the origin claimed or determined for any goods accounted for under section 32, examine the goods and take samples thereof in reasonable amounts;
- (e) where the officer suspects on reasonable grounds that this Act or the regulations or any other Act of Parliament administered or enforced by him or any regulations thereunder have been or might be contravened in respect of any goods, examine the goods and open or cause to be opened any package or container thereof; or
- (f) where the officer suspects on reasonable grounds that this Act or the regulations or any other Act of Parliament administered or enforced by him or any regulations thereunder have been or might be contravened in respect of any conveyance or any goods thereon, stop, board and search the conveyance, examine any goods thereon and open or cause to be opened any package or container thereof and direct that the conveyance be moved to a customs office or other suitable place for any such search, examination or opening.
- (2) Exception for mail.—An officer may not open or cause to be opened any imported mail that weighs thirty grams or less unless the person to whom it is addressed consents or the person who sent it has completed and attached to the mail a label in accordance with article 116 of the Detailed Regulations of the Universal Postal Convention.
- (3) **Idem.** —An officer may show any book, record, writing or other document obtained for the purposes of this Act, or permit a copy thereof to be given, to the person by or on behalf of whom the book, record, writing or other document was provided, or to any person authorized to transact business under this Act as his agent, at the request of any such person and on receipt of such fee, if any, as is prescribed.
- (4) **Samples.**—Samples taken pursuant to subsection (1) shall be disposed of in such manner as the Minister may direct. S.C. 1988, c. 65, s. 79.
- 100. (1) Officer stationed on board conveyance.—An officer may be stationed on board any conveyance that has arrived in Canada from a place outside Canada for the purpose of doing anything he is required or authorized to do in the administration or enforcement of this or any other Act of Parliament.
 - (2) Carriage, accommodation and food provided. An officer stationed on board a

conveyance pursuant to subsection (1) shall be carried free of charge, and the person in charge of the conveyance shall ensure that the officer is provided with suitable accommodation and food.

- 101. Detention of controlled goods.—Goods that have been imported or are about to be exported may be detained by an officer until he is satisfied that the goods have been dealt with in accordance with this Act, and any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods, and any regulations made thereunder.
- 102. (1) Disposition of goods illegally imported.—Goods that have been imported in contravention of this or any other Act of Parliament, or any regulation made thereunder, and that have been detained under section 101 shall be disposed of in accordance with that Act or regulation, but, where there is no provision in that Act or regulation for the disposition of such goods, the importer may abandon the goods to Her Majesty in right of Canada in accordance with section 36 or export them.
- (2) **Idem.**—Goods referred to in subsection (1) that are not disposed of, abandoned or exported in accordance with that subsection within such period of time as may be prescribed, may be deposited in a place of safe-keeping referred to in section 37 and, if they are so deposited, sections 37 to 39 apply in respect of the goods as if they had been deposited therein pursuant to section 37.
- (3) **Duties removed.**—Goods are, from the time they are disposed of or exported under subsection (1), no longer charged with duties levied thereon.
- 103. (1) Custody of goods subject to seizure but not seized.—An officer may, instead of seizing any goods or conveyances that he is authorized by or pursuant to this Act to seize, leave them in the custody of the person from whom he would otherwise have seized them or any other person satisfactory to the officer.
- (2) **Notice.**—Where an officer leaves goods or a conveyance in the custody of any person pursuant to subsection (1), the officer shall give notice to the person from whom he would otherwise have seized them that he is doing so, and the goods or conveyance shall, for the purposes of this Act, be deemed to have been seized on the day the notice is given.
- (3) Conditions of custody.—Every person who has the custody of goods or a conveyance pursuant to subsection (1) shall hold them in safe-keeping, without charge to Her Majesty, until their forfeiture is final or a final decision is taken as to whether or not they are forfeit, and shall make them available to an officer on request, and shall not dispose of them in any manner or remove them from Canada, while he has custody of them pursuant to subsection (1), unless he is authorized to do so by an officer.
- (4) When officer to take custody.—An officer may at any time take custody of goods or a conveyance left in the custody of any person pursuant to subsection (1) and shall, where the forfeiture of the goods or conveyance is final, take custody thereof.
- **104.** Power to call in aid.—An officer may call on other persons to assist him in exercising any power of search, seizure or detention that he is authorized under this Act to exercise, and any person so called on is authorized to exercise any such power.
- 105. Carrying out agreements.—Where the Government of Canada has entered into an agreement with the government of another country pursuant to which powers, duties or functions relating to the importation of goods into Canada may be exercised or performed in that other country and powers, duties or functions relating to the importation of goods into that other country may be exercised or performed in Canada, any officer or peace officer designated

for the purpose by the Minister may exercise in Canada any powers of inspection, examination, search or detention on behalf of that other country that are specified in the agreement.

Limitation of Actions or Proceedings

- **106.** (1) **Limitation of action against officer or person assisting.**—No action or judicial proceeding shall be commenced against an officer for anything done in the performance of his duties under this or any other Act of Parliament or a person called on to assist an officer in the performance of such duties more than three months after the time when the cause of action or the subject-matter of the proceeding arose.
- (2) Limitation of action to recover goods.—No action or judicial proceeding shall be commenced against the Crown, an officer or any person in possession of goods under the authority of an officer for the recovery of anything seized, detained or held in custody or safe-keeping under this Act more than three months after the later of
 - (a) the time when the cause of action or the subject-matter of the proceeding arose; and
 - (b) the final determination of the outcome of any action or proceeding taken under this Act in respect of the thing seized, detained or held in custody or safe-keeping.
- (3) Stay of action or judicial proceeding.—Where, in any action or judicial proceeding taken otherwise than under this Act, substantially the same facts are at issue as those that are at issue in an action or proceeding under this Act, the Minister may file a stay of proceedings with the body before whom that action or judicial proceeding is taken, and thereupon the proceedings before that body are stayed pending final determination of the outcome of the action or proceeding under this Act.

Disclosure of Information

- **107.** (1) **Communication of information.**—Except as authorized by section 108, no official or authorized person shall
 - (a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act or by an authorized person for the purpose of carrying out an agreement made under subsection 147.1(3); or
 - (b) knowingly allow any person to inspect or to have access to any book, record, writing or other document obtained by or on behalf of the Minister for the purposes of this Act or by an authorized person for the purpose of carrying out an agreement made under subsection 147.1(3).
 - (c) knowingly use, other than in the course of the duties of the official or authorized person in connection with the administration or enforcement of this Act, any information obtained by or on behalf of the Minister for the purposes of this Act or by an authorized person for the purpose of carrying out an agreement made under subsection 147.1(3).
 - (2) **Definitions.**—In subsection (1),
- "authorized person".—"authorized person" means any person engaged or employed, or formerly engaged or employed,
 - (a) by or on behalf of Her Majesty,
 - (b) as, by or on behalf of an agent of Her Majesty, or
 - (c) as, by or on behalf of an agent of an agent of Her Majesty

- to assist in carrying out the purposes and provisions of this Act or an agreement made under subsection 147.1(3);
- "official".—"official" means any person employed in or occupying a position of responsibility in the service of Her Majesty, or any person formerly so employed or formerly occupying such a position. S.C. 1992, c. 28, s. 25.
- 108. (1) Exception.—An officer may communicate or allow to be communicated information obtained under this Act, or allow inspection of or access to any book, record, writing or other document obtained by or on behalf of the Minister for the purposes of this Act, to or by
 - (a) any officer or any person employed in the Department of National Revenue;
 - (b) any person, or any person within a class of persons, that the Minister may authorize, subject to such conditions as the Minister may specify; or
 - (c) any person otherwise legally entitled thereto.
 - (2) Idem.—An officer may, on the order or subpoena of a court of record,
 - (a) give evidence relating to information obtained by or on behalf of the Minister for the purposes of this Act; or
 - (b) produce any book, record, writing or other document obtained by or on behalf of the Minister for the purposes of this Act.
- (3) **Idem.**—An officer may show any book, record, writing or other document obtained for the purposes of this Act, or permit a copy thereof to be given, to the person by or on behalf of whom the book, record, writing or other document was provided, or to any person authorized to transact business under this Act as his agent, at the request of any such person and on receipt of such fee, if any, as is prescribed.
- (4) **Regulations.**—The Governor in Council may make regulations prescribing the circumstances in which fees may be charged for providing information, allowing inspection of or access to documents or making or certifying copies thereof pursuant to this section and the amount of any such fees. R.S.C. 1985, c. 1 (4th Supp.), s. 21.

Inquiries

- **109.** (1) **Inquiry.**—The Minister may, for any purpose related to the administration or enforcement of this Act, authorize any person to make an inquiry into any matter specified by the Minister.
- (2) **Powers of person authorized.**—A person authorized pursuant to subsection (1) has all of the powers of a person appointed as a commissioner under Part I of the *Inquiries Act*.
- (3) **Travel and living expenses.**—Reasonable travel and living expenses shall be paid to any person summoned by a person authorized under subsection (1) at the time of the service of the summons.

Penalties and Interest

- **109.1** Failure to comply with regulation or term of licence.—Every person who fails to comply with a regulation made under section 30, with a regulation made under subsection 164(1) in relation to ships' stores or with the terms and conditions on which a licence was issued under section 24 is liable to a penalty of one thousand dollars or such lesser amount as the Minister may direct. S.C. 1993, c. 25, s. 80.
 - 109.2 Contravention relating to tobacco products.—Every person who

- (a) removes tobacco products or causes tobacco products to be removed from a customs office, sufferance warehouse, bonded warehouse or duty free shop in contravention of this Act or the regulations, or
- (b) sells or uses tobacco products designated as ships' stores in contravention of this Act or the regulations

is liable to a penalty equal to double the total of the duties and taxes that would be payable on like tobacco products released in like condition at the rates of duties and taxes applicable to like tobacco products at the time the penalty is assessed, or to such lesser amount as the Minister may direct. S.C. 1993, c. 25, s. 80.

- **109.3** (1) **Assessment.**—A penalty to which a person is liable under section 109.1 or 109.2 may be assessed by an officer and, where such an assessment is made, an officer shall serve on the person a written notice of that assessment by sending or delivering it to the person.
- (2) **Limitation on assessment.**—A person shall not be assessed penalties under both sections 109.1 and 109.2 in respect of the same contravention of this Act or the regulations.
- (3) **Penalty in addition to other sanction.**—An assessment under subsection (1) may be made in addition to a seizure under this Act or the service of a notice under section 124 in respect of the same contravention of this Act or the regulations, S.C. 1993, c. 25, s. 80.
- **109.4** When penalty becomes payable.—A penalty assessed against a person under section 109.3 shall become payable on the day the notice of assessment of the penalty is served on the person. S.C. 1993, c. 25, s. 80.
- 109.5 Interest on penalties.—A person on whom a notice of assessment of a penalty has been served under section 109.3 shall, unless a request for a decision of the Minister is made under subsection 129(1) in respect of the assessment, pay, in addition to the penalty, interest at the prescribed rate for the period beginning on the day after the notice was served on the person and ending on the day the penalty has been paid in full, calculated on the outstanding balance of the penalty, except that interest shall not be payable on the penalty if the penalty is paid in full within thirty days after the day the notice was served on the person. S.C. 1993, c. 25, s. 80.

Seizures

- 110. (1) Seizure of goods or conveyances.—An officer may, where he believes on reasonable grounds that this Act or the regulations have been contravened in respect of goods, seize as forfeit
 - (a) the goods; or
 - (b) any conveyance that the officer believes on reasonable grounds was made use of in respect of the goods, whether at or after the time of the contravention.
- (2) Seizure of conveyances.—An officer may, where he believes on reasonable grounds that this Act or the regulations have been contravened in respect of a conveyance or in respect of persons transported by a conveyance, seize as forfeit the conveyance.
- (3) **Seizure of evidence.**—An officer may, where he believes on reasonable grounds that this Act or the regulations have been contravened, seize anything that he believes on reasonable grounds will afford evidence in respect of the contravention.
- (4) **Notice of seizure.**—An officer who seizes goods or a conveyance as forfeit under subsection (1) or (2) shall take such measures as are reasonable in the circumstances to give notice of the seizure to any person who the officer believes on reasonable grounds is entitled to make an application under section 138 in respect of the goods or conveyance.

- 111. (1) Information for search warrant.—A justice of the peace who is satisfied by information on oath in the form set out as Form 1 in Part XXVIII of the *Criminal Code*, varied to suit the case, that there are reasonable grounds to believe that there may be found in a building, receptacle or place
 - (a) any goods or conveyance in respect of which this Act or the regulations have been contravened or are suspected of having been contravened,
 - (b) any conveyance that has been made use of in respect of such goods, whether at or after the time of the contravention, or
 - (c) anything that there are reasonable grounds to believe will afford evidence in respect of a contravention of this Act or the regulations,

may at any time issue a warrant under his hand authorizing an officer to search the building, receptacle or place for any such thing and to seize it.

- (2) Execution in another territorial jurisdiction.—A justice of the peace may, where a building, receptacle or place referred to in subsection (1) is in a territorial division other than that in which the justice of the peace has jurisdiction, issue his warrant in a form similar to the form referred to in subsection (1), modified according to the circumstances, and the warrant may be executed in the other territorial division after it has been endorsed, in the manner set out in Form 28 of Part XXVIII of the *Criminal Code*, by a justice of the peace having jurisdiction in that territorial division.
- (3) Seizure of things not specified.—An officer who executes a warrant issued under subsection (1) may seize, in addition to the things mentioned in the warrant,
 - (a) any goods or conveyance in respect of which the officer believes on reasonable grounds that this Act or the regulations have been contravened;
 - (b) any conveyance that the officer believes on reasonable grounds was made use of in respect of such goods, whether at or after the time of the contravention; or
 - (c) anything that the officer believes on reasonable grounds will afford evidence in respect of a contravention of this Act or the regulations.
- (4) **Execution of search warrant.**—A warrant issued under subsection (1) shall be executed by day, unless the justice of the peace, by the warrant, authorizes execution of it by night.
- (5) **Form of search warrant.**—A warrant issued under subsection (1) may be in the form set out as Form 5 in Part XXVIII of the *Criminal Code*, varied to suit the case.
- (6) Where warrant not necessary.—An officer may exercise any of the powers referred to in subsection (1) without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be practical to obtain the warrant.
- (7) Exigent circumstances.—For the purposes of subsection (6), exigent circumstances include circumstances in which the delay necessary to obtain a warrant under subsection (1) would result in danger to human life or safety or the loss or destruction of anything liable to seizure. S.C. 1992, c. 1, s. 143.
- 112. Powers of entry.—For the purpose of exercising his authority under section 111, an officer may, with such assistance as he deems necessary, break open any door, window, lock, fastener, floor, wall, ceiling, compartment, plumbing fixture, box, container or any other thing.
- 113. Limitation for seizures and ascertained forfeitures.—No seizure may be made under this Act or notice sent under section 124 more than six years after the contravention or use in respect of which such seizure is made or notice is sent.

- 114. (1) Custody of things seized.—Anything that is seized under this Act shall forthwith be placed in the custody of an officer.
- (2) **Report where evidence seized.**—Where an officer seizes anything as evidence under this Act, the officer shall forthwith report the circumstances of the case to the Deputy Minister.
- (3) **Return of evidence.**—Anything that is seized under this Act as evidence alone shall be returned forthwith on completion of all proceedings in which the thing seized may be required.
- 115. (1) Copies of records, books or documents.—Where any record, book or document is examined or seized under this Act, the Minister, or the officer by whom the record, book or document is examined or seized, may make or cause to be made one or more copies thereof, and a copy of any such record, book or document purporting to be certified by the Minister or a person authorized by the Minister is admissible in evidence and has the same probative force as the original record, book or document would have if it had been proved in the ordinary way.
- (2) **Detention of records seized.**—No records, books or documents that have been seized as evidence under this Act shall be detained for a period of more than three months after the time of seizure, unless, before the expiration of that period,
 - (a) the person from whom they were seized agrees to their further detention for a specified period of time;
 - (b) a justice of the peace is satisfied on application that, having regard to the circumstances, their further detention for a specified period of time is warranted and he so orders; or
 - (c) judicial proceedings are instituted in which the things seized may be required.
- 116. Goods stopped or taken by peace officer.—Where a peace officer detains or seizes anything that he suspects is subject to seizure under this Act, he shall forthwith notify an officer thereof and describe the thing detained or seized to the officer.

Return of Goods Seized

- 117. Return of goods seized.—An officer may, subject to this or any other Act of Parliament, return any goods that have been seized under this Act to the person from whom they were seized or to any person authorized by the person from whom they were seized on receipt of
 - (a) an amount of money of a value equal to
 - (i) the aggregate of the value for duty of the goods and the amount of duties levied thereon, if any, calculated at the rates applicable thereto
 - (A) at the time of seizure, where the goods have not been accounted for under subsection 32(1), (2) or (5) or where duties or additional duties have become due thereon under sections 88 to 92, or
 - (B) at the time the goods were accounted for under subsection 32(1), (2) or (5), in any other case, or
 - (ii) such lesser amount as the Minister may direct; or
 - (b) where the Minister so authorizes, security satisfactory to the Minister.
 - 118. Return of conveyance seized.—An officer may, subject to this or any other Act of

Parliament, return any conveyance that has been seized under this Act to the person from whom it was seized or to any person authorized by the person from whom it was seized on receipt of

- (a) an amount of money of a value equal to
 - (i) the value of the conveyance at the time of seizure, as determined by the Minister, or
 - (ii) such lesser amount as the Minister may direct; or
- (b) where the Minister so authorizes, security satisfactory to the Minister.
- 119. (1) Return of animals or perishable goods seized.—An officer shall, subject to this or any other Act of Parliament, return any animals or perishable goods that have been seized under this Act and have not been sold under subsection (2) to the person from whom they were seized or to any person authorized by the person from whom they were seized at the request of such person and on receipt of
 - (a) an amount of money of a value equal to
 - (i) the aggregate of the value for duty of the animals or perishable goods and the amount of duties levied thereon, if any, calculated at the rates applicable thereto,
 - (A) at the time of seizure, where the animals or perishable goods have not been accounted for under subsection 32(1), (2) or (5) or where duties or additional duties have become due thereon under sections 88 to 92, or
 - (B) at the time the animals or perishable goods were accounted for under subsection 32(1), (2) or (5), in any other case, or
 - (ii) such lesser amount as the Minister may direct; or
 - (b) where the Minister so authorizes, security satisfactory to the Minister.
- (2) Sale of seized goods.—An officer may sell any animals or perishable goods that have been seized under this Act, in order to avoid the expense of keeping them or to avoid their deterioration, at any time after giving the person from whom they were seized or the owner thereof a reasonable opportunity to obtain the animals or perishable goods under subsection (1), and the proceeds of the sale shall be held as forfeit in lieu of the thing sold.
- 120. Value substituted for value for duty.—For the purpose of calculating the amount of money referred to in paragraph 117(a) or 119(1)(a), where the value for duty of goods cannot be ascertained, the value of the goods at the time of seizure, as determined by the Minister, may be substituted for the value for duty thereof.
- 121. Goods no longer forfeit.—Goods or conveyances in respect of which money or security is received under section 117, 118 or 119 shall cease to be forfeit from the time the money or security is received and the money or security shall be held as forfeit in lieu thereof.

For feitures

GENERAL

- 122. Forfeitures accrue automatically from time of contravention.—Subject to the reviews and appeals established by this Act, any goods or conveyances that are seized as forfeit under this Act within the time period set out in section 113 are forfeit
 - (a) from the time of the contravention of this Act or the regulations in respect of which the goods or conveyances were seized, or
 - (b) in the case of a conveyance made use of in respect of goods in respect of which this Act or the regulations have been contravened, from the time of such use,

and no act or proceeding subsequent to the contravention or use is necessary to effect the forfeiture of such goods or conveyances.

123. Review of forfeiture.—The forfeiture of goods or conveyances seized under this Act or any money or security held as forfeit in lieu thereof is final and not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by section 129.

Ascertained Forfeiture

- 124. (1) Ascertained forfeitures.—Where an officer believes on reasonable grounds that a person has contravened any of the provisions of this Act or the regulations in respect of any goods or conveyance, the officer may, if the goods or conveyance is not found or if the seizure thereof would be impractical, serve a written notice on that person demanding payment of
 - (a) an amount of money determined under subsection (2) or (3), as the case may be; or
 - (b) such lesser amount as the Minister may direct.
- (2) **Determination of amount of payment in respect of goods.**—For the purpose of paragraph (1)(a), an officer may demand payment in respect of goods of an amount of money of a value equal to the aggregate of the value for duty of the goods and the amount of duties levied thereon, if any, calculated at the rates applicable thereto
 - (a) at the time the notice is served, where the goods have not been accounted for under subsection 32(1), (2) or (5) or where duties or additional duties have become due thereon under sections 88 to 92; or
 - (b) at the time the goods were accounted for under subsection 32(1), (2) or (5), in any other case.
- (3) **Determination of amount of payment in respect of conveyances.**—For the purpose of paragraph (1)(a), an officer may demand payment in respect of a conveyance of an amount of money of a value equal to the value of the conveyance at the time the notice is served, as determined by the Minister.
- (4) Value substituted for value for duty.—For the purpose of calculating the amount of money referred to in subsection (2), where the value for duty of goods cannot be ascertained, the value of the goods at the time the notice is served under subsection (1), as determined by the Minister, may be substituted for the value for duty thereof.
- (5) **Service of notice.**—Service of the notice referred to in subsection (1) is sufficient if it is sent by registered mail addressed to the person on whom it is to be served at his latest known address.
- **125. Seizure cancels notice.**—The seizure under this Act of anything in respect of which a notice is served under section 124, except as evidence alone, constitutes a cancellation of the notice where the notice and the seizure are in respect of the same contravention.
- 126. Limitation respecting seizure.—Nothing in respect of which a notice is served under section 124 is, from the time the amount demanded in the notice is paid or from the time a decision of the Minister under section 131 is requested in respect of the amount demanded, subject to seizure under this Act in respect of the same contravention except as evidence alone.

Review of Seizure, Ascertained Forfeiture or Penalty Assessment

127. Review of ascertained forfeiture or penalty assessment. – The debt due to Her Majesty as a result of a notice served under section 109.3 or a demand under section 124 is final

and not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by section 129. S.C. 1993, c. 25, s. 81.

- 128. Report to Deputy Minister.—Where goods or a conveyance has been seized under this Act, or a notice has been served under section 109.3 or 124, the officer who seized the goods or conveyance or served the notice or caused it to be served shall forthwith report the circumstances of the case to the Deputy Minister. S.C. 1993, c. 25, s. 81.
 - 129. (1) Request for Minister's decision.—Any person
 - (a) from whom goods or a conveyance is seized under this Act,
 - (b) who owns goods or a conveyance that is seized under this Act,
 - (c) from whom money or security is received pursuant to section 117, 118 or 119 in respect of goods or a conveyance seized under this Act, or
 - (d) on whom a notice is served under section 109.3 or 124

may, within thirty days after the date of the seizure or the service of the notice under section 109.3 or 124, request a decision of the Minister under section 131 by giving notice in writing to the officer who seized the goods or conveyance or served the notice or caused it to be served, or to an officer at the customs office closest to the place where the seizure took place or the notice was served.

- (2) **Burden of proof.**—The burden of proof that notice was given under subsection (1) lies on the person claiming to have given the notice. S.C. 1993, c. 25, s. 82.
- 130. (1) Notice of reasons for action.—Where a decision of the Minister under section 131 is requested under section 129, the Deputy Minister shall forthwith serve on the person who requested the decision written notice of the reasons for the seizure, or for the notice served under section 109.3 or 124, in respect of which the decision is requested.
- (2) Evidence.—The person on whom a notice is served under subsection (1) may, within thirty days after the notice is served, furnish such evidence in the matter as he desires to furnish.
- (3) **Idem.**—Evidence may be given pursuant to subsection (2) by affidavit made before any justice of the peace, commissioner for taking oaths or notary public. S.C. 1993, c. 25, s. 83.
- 131. (1) Decision of the Minister.—After the expiration of the thirty days referred to in subsection 130(2), the Minister shall, as soon as is reasonably possible having regard to the circumstances, consider and weigh the circumstances of the case and decide
 - (a) in the case of goods or a conveyance seized or with respect to which a notice was served under section 124 on the ground that this Act or the regulations were contravened in respect thereof, whether the Act or the regulations were so contravened; or
 - (b) in the case of a conveyance seized or in respect of which a notice was served under section 124 on the ground that it was made use of in respect of goods in respect of which this Act or the regulations were contravened, whether the conveyance was made use of in that way and whether the Act or the regulations were so contravened.
 - (c) in the case of a penalty under section 109.1 assessed against a person for failure to comply with a regulation referred to in that section or with the terms and conditions on which a licence was issued under section 24, whether the person so failed to comply with the regulation or the terms and conditions of the licence; or
 - (d) in the case of a penalty under section 109.2 assessed against a person for a contravention of this Act or the regulations as described in that section, whether this Act or the regulations were so contravened.

- (2) **Notice of decision.**—The Minister shall, forthwith on making a decision under subsection (1), serve on the person who requested the decision a detailed written notice of the decision.
- (3) **Judicial review.**—The Minister's decision under subsection (1) is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by subsection 135(1). S.C. 1993, c. 25, s. 84.
- **132.** (1) Where there is no contravention.—Subject to this or any other Act of Parliament,
 - (a) where the Minister decides, under paragraph 131(1)(a) or (b), that there has been no contravention of this Act or the regulations in respect of the goods or conveyance referred to in that paragraph, or, under paragraph 131(1)(b), that the conveyance referred to in that paragraph was not used in the manner described in that paragraph, the Minister shall forthwith authorize the removal from custody of the goods or conveyance or the return of any money or security taken in respect of the goods or conveyance; and
 - (b) where, as a result of a decision made by the Minister under paragraph 131(1)(c) or (d), the Minister decides that a penalty that was assessed under section 109.3 is not justified by the facts or the law, the Minister shall forthwith cancel the assessment of the penalty and authorize the return of any money paid on account of the penalty and any interest that was paid under section 109.5 in respect of the penalty.
- (2) **Interest on money returned.**—Where any money is authorized under subsection (1) to be returned to any person, there shall be paid to that person, in addition to the money returned, interest on the money at the prescribed rate for the period beginning on the day after the day the money was paid and ending on the day the money is returned.
- (3) **Amounts under ten dollars.**—Where interest owing under this section is less than ten dollars, no interest shall be paid. S.C. 1992, c. 28, s. 26; S.C. 1993, c. 25, s. 85.
- 133. (1) Where there is contravention.—Where the Minister decides, under paragraph 131(1)(a) or (b), that there has been a contravention of this Act or the regulations in respect of the goods or conveyance referred to in that paragraph, and, in the case of a conveyance referred to in paragraph 131(1)(b), that it was used in the manner described in that paragraph, the Minister may, subject to such terms and conditions as the Minister may determine.
 - (a) return the goods or conveyance on receipt of an amount of money of a value equal to an amount determined under subsection (2) or (3), as the case may be;
 - (b) remit any portion of any money or security taken; and
 - (c) where the Minister considers that insufficient money or security was taken or where no money or security was received, demand such amount of money as he considers sufficient, not exceeding an amount determined under subsection (4) or (5), as the case may be.
- (1.1) **Idem.**—Where, having regard to a decision made by the Minister under paragraph 131(1)(c) or (d), the Minister decides that the penalty under section 109.1 or 109.2 that was assessed is insufficient, the Minister may demand such additional amount of money as the Minister considers sufficient to increase the penalty to an amount not exceeding the maximum amount to which the person was liable under that section.
- (2) **Return of goods under paragraph** (1)(a).—Goods may be returned under paragraph (1)(a) on receipt of an amount of money of a value equal to

- (a) the aggregate of the value for duty of the goods and the amount of duties levied thereon, if any, calculated at the rates applicable thereto
 - (i) at the time of seizure, where the goods have not been accounted for under subsection 32(1), (2) or (5) or where duties or additional duties have become due thereon under sections 88 to 92, or
 - (ii) at the time the goods were accounted for under subsection 32(1), (2) or (5), in any other case; or
- (b) such lesser amount as the Minister may direct.
- (3) **Return of a conveyance under paragraph** (1)(a).—A conveyance may be returned under paragraph (1)(a) on receipt of an amount of money of a value equal to
 - (a) the value of the conveyance at the time of seizure, as determined by the Minister; or
 - (b) such lesser amount as the Minister may direct.
- (4) Amount demanded in respect of goods under paragraph (1)(c).—The amount of money that the Minister may demand under paragraph (1)(c) in respect of goods shall not exceed an amount equal to the aggregate of the value for duty of the goods and the amount of duties levied thereon, if any, calculated at the rates applicable thereto,
 - (a) at the time of seizure or of service of the notice under section 124, where the goods have not been accounted for under subsection 32(1), (2) or (5) or where duties or additional duties have become due thereon under sections 88 to 92; or
 - (b) at the time the goods were accounted for under subsection 32(1), (2) or (5), in any other case.
- (5) Amount demanded in respect of conveyance under paragraph (1)(c),—The amount of money that the Minister may demand under paragraph (1)(c) in respect of a conveyance shall not exceed an amount equal to the value of the conveyance at the time of seizure or of service of the notice under section 124, as determined by the Minister.
- (6) Value substituted for value for duty.—For the purpose of calculating the amount of money referred to in subsection (2) or (4), where the value for duty of goods cannot be ascertained, the value of the goods at the time of seizure or of service of the notice under section 124, as determined by the Minister, may be substituted for the value for duty thereof.
- (7) Interest.—Where an amount of money is demanded under paragraph (1)(c), the person to whom the demand is made shall, unless an appeal is pending on the matter, pay the amount demanded together with interest at the prescribed rate for the period beginning on the thirty-first day after the day notice is served under subsection 131(2) and ending on the day the amount has been paid in full, calculated on the outstanding balance of the amount.
- (8) Amounts under ten dollars.—Where interest owing under this section is less than ten dollars, no interest shall be paid. S.C. 1992, c. 28, s. 27; S.C. 1993, c. 25, s. 86.
- **134. Delegation.**—The Minister may by order authorize any officer to exercise the powers conferred on the Minister by sections 131 to 133.
- 135. (1) Federal Court.—A person who requests a decision of the Minister under section 131 may, within ninety days after being notified of the decision, appeal the decision by way of an action to the Federal Court–Trial Division in which that person is the plaintiff and the Minister is the defendant.
- (2) **Ordinary action.**—The *Federal Court Act* and the *Federal Court Rules* applicable to ordinary actions apply in respect of actions instituted under subsection (1) except as varied by special rules made in respect of such actions. S.C. 1990, c. 8, s. 49.

- 136. Restoration of goods pending appeal.—Where an appeal is taken by the Crown from any judgment that orders the Crown to give or return anything that has been seized under this Act to any person, the execution of the judgment shall not be suspended if the person to whom the goods are ordered given or returned gives such security to the Crown as the court that rendered the judgment, or a judge thereof, considers sufficient to ensure delivery of the goods or the full value thereof to the Crown if the judgment so appealed is reversed.
- **137. Service of notices.**—The service of the Deputy Minister's notice under section 130 or the notice of the Minister's decision under section 131 is sufficient if it is sent by registered mail addressed to the person on whom it is to be served at his latest known address.

Third Party Claims

- 138. (1) Claiming interest.—Where anything has been seized as forfeit under this Act, any person, other than the person in whose possession the thing was when seized, who claims an interest therein as owner, mortgagee, lien-holder or holder of any like interest may, within sixty days after such seizure, apply by notice in writing to the court for an order under section 139.
- (2) **Date of hearing.**—A judge of the court to which an application is made under this section shall fix a day, which day shall be not less than thirty days after the date of the filing of the application, for the hearing thereof.
- (3) **Notice to Deputy Minister.**—A person who makes an application under this section shall serve notice of the application and of the hearing on the Deputy Minister, or an officer designated by the Deputy Minister for the purposes of this section, not later than fifteen days after a day for the hearing of the application is fixed pursuant to subsection (2).
- (4) **Service of notice.**—The service of a notice under subsection (3) is sufficient if it is sent by registered mail addressed to the Deputy Minister.
 - (5) **Definition of "court".**—In this section and sections 139 and 140, "court" means
 - (a) in the Province of Ontario, the Ontario Court (General Division);
 - (b) in the Province of Quebec, the Superior Court;
 - (c) in the Provinces of Nova Scotia and British Columbia, the Yukon Territory and the Northwest Territories, the Supreme Court; and
 - (d) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench; and
 - (e) [Repealed]
 - (f) in the Provinces of Prince Edward Island and Newfoundland, the Trial Division of the Supreme Court. S.C. 1992, c. 1, s. 62; S.C. 1992, c. 51, s. 45; S.C. 1993, c. 28, s. 78.
- **139.** Order.—Where, on the hearing of an application made under section 138, it is made to appear to the satisfaction of the court
 - (a) that the applicant acquired the interest in respect of which he is applying in good faith prior to the contravention or use in respect of which the seizure was made.
 - (b) that the applicant is innocent of any complicity in the contravention of this Act or the regulations or the use of a conveyance that resulted in the seizure and of any collusion in relation to that contravention or use, and
 - (c) that the applicant exercised all reasonable care in respect of any person permitted to obtain possession of the thing seized to satisfy himself that it was not likely to be used in

contravention of this Act or the regulations or, where the applicant is a mortgagee or lienholder, that he exercised such care with respect to the mortgagor or lien-giver,

the applicant is entitled to an order declaring that his interest is not affected by such seizure and declaring the nature and extent of his interest at the time of the contravention or use.

- **140.** (1) **Appeal.**—A person who makes an application under section 138 or the Crown may appeal to the court of appeal from an order made under section 139 and the appeal shall be asserted, heard and decided according to the ordinary procedure governing appeals to the court of appeal from orders or judgments of a court.
- (2) **Definition of "court of appeal".**—In this section, "court of appeal" means, in the province in which an order under this section is made, the court of appeal for that province as defined in section 2 of the *Criminal Code*.
- 141. (1) Delivery to applicant.—The Deputy Minister or an officer designated by him shall, after forfeiture of a thing has become final and on application made to the Deputy Minister by a person who has obtained a final order under section 139 or 140 in respect of the thing, direct that
 - (a) the thing be given to the applicant; or
 - (b) an amount calculated on the basis of the interest of the applicant in the thing at the time of the contravention or use in respect of which the thing was seized, as declared in the order, be paid to him.
- (2) Limit on amount paid.—The total amount paid under paragraph (1)(b) in respect of a thing shall, where the thing was sold or otherwise disposed of under this Act, not exceed the proceeds of the sale or disposition, if any, less any costs incurred by Her Majesty in respect of the thing, and, where there are no proceeds of a disposition of a thing under this Act, no payment shall be made pursuant to paragraph (1)(b) in respect of the thing.

Disposal of Things Abandoned or Forfeit

- **142.** (1) **Disposal of things abandoned or forfeit.**—Anything that has been abandoned to Her Majesty in right of Canada under this Act and anything the forfeiture of which is final under this Act shall
 - (a) where the Minister deems it appropriate, be exported;
 - (b) where the importation thereof is prohibited, or where the Minister considers the thing to be unsuitable for sale or of insufficient value to justify a sale, be disposed of in such manner, otherwise than by sale, as the Minister may direct; and
 - (c) in any other case, be sold by public auction or public tender or by the Minister of Supply and Services pursuant to the *Surplus Crown Assets Act*, subject to such regulations as may be prescribed.
- (2) **Duties removed.**—Any goods that are disposed of pursuant to subsection (1) are, from the time of disposal, no longer charged with duties.

Collections

143. (1) Fees, charges and other amounts owing.—Any duties, fee, charge or other amount owing to Her Majesty in right of Canada pursuant to this Act or the regulations, other than an amount referred to in subsection (2) or (3), constitutes a debt due to Her Majesty from and after the time such amount should have been paid, and any person from whom the amount

is owing is in default unless, within thirty days after the time a notice of arrears is sent by mail addressed to him at his latest known address or delivered to that address, that person

- (a) pays the amount owing as indicated in the notice; or
- (b) where an appeal is available to him under section 144, appeals the notice thereunder.
- (2) **Penalty or ascertained forfeiture.**—Any amount of money demanded as a penalty in a notice of assessment served under section 109.3 or demanded in a notice served under section 124, from and after the time of service, constitutes a debt due to Her Majesty from the person on whom the notice is served, and that person is in default unless, within thirty days after the time of service, the person
 - (a) pays that amount; or
 - (b) requests a decision of the Minister under section 131.
- (3) Amounts demanded by the Minister.—Any amount of money demanded under paragraph 133(1)(c) or subsection 133(1.1), from and after the time notice is served under subsection 131(2), constitutes a debt due to Her Majesty from the person who requested the decision and that person is in default unless, within ninety days after the time of service, the person
 - · (a) pays the amount so demanded; or
 - (b) where the person appeals the decision of the Minister under section 135, gives security satisfactory to the Minister. S.C. 1993, c. 25, s. 87.
- 144. Appeal.—A person to whom a notice of arrears is sent or delivered under subsection 143(1) may, if no appeal is or was available to that person under section 67 or 68 in respect of the same matter, within thirty days after such notice is sent, appeal the notice by way of an action in the Federal Court in which the person is the plaintiff and the Minister is the defendant. S.C. 1990, c. 8, s. 50.
- **145.** (1) **Certificate of default.**—Any debt due to Her Majesty in respect of which there is a default of payment under section 143 or such part of any such debt that has not been paid, may be certified by the Minister.
- (2) **Judgments.**—On production to the Federal Court, a certificate made under this section shall be registered in the Court and, when registered, has the same force and effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the Court for a debt of the amount specified in the certificate.
- (3) **Costs.**—All reasonable costs and charges attendant on the registration of the certificate are recoverable in like manner as if they had been certified and the certificate had been registered under this section.
- 146. (1) Detention of and lien on imported or exported goods.—Any goods imported or reported for exportation under section 95 on his own behalf by a person to whom a notice referred to in subsection 143(1), (2) or (3) has been sent, delivered or served, or any goods imported or reported for exportation on behalf of any such person, at any time after such notice is sent, delivered or served are subject to a lien for the amount demanded in the notice and may be detained by an officer at the expense of that person until such amount is paid.
- (2) **Sale of detained goods.**—Where a person is in default of payment of a debt due to Her Majesty under section 143, the Minister, on giving thirty days notice by registered mail addressed to the person at his latest known address, may direct that any goods imported or reported for exportation by or on behalf of the person that have been detained under subsection (1), or any portion thereof, be sold by public auction or public tender or by the Minister of

Supply and Services pursuant to the *Surplus Crown Assets Act*, subject to such regulations as may be prescribed.

- (3) **Idem.**—The proceeds of any sale under subsection (2) shall be applied to the payment of the debt referred to in that subsection, any expenses incurred by Her Majesty in right of Canada in respect of the goods sold and any duties thereon, and the surplus, if any, shall be paid to the person referred to in subsection (2).
- 147. Set-off.—Where a person is indebted to Her Majesty in right of Canada under this Act, the Minister may require the retention by way of deduction or set-off of such amount as the Minister may specify out of any amount that may be or become payable to that person by Her Majesty in right of Canada and, where an amount payable to a person under a provision of this Act has at any time been so retained, the amount shall be deemed to have been paid to the person at that time under that provision and to have been paid by the person at that time on account of the debt to Her Majesty. S.C. 1992, c. 28, s. 28.

Collection of Duties on Mail

- **147.1** (1) **Definition.**—In this section, "Corporation" means the Canada Post Corporation.
- (2) **Application.**—Subsections (3) to (13) apply to mail except as may be provided in regulations made under paragraph (14)(e).
- (3) Collection agreement.—The Minister and the Corporation may enter into an agreement in writing whereby the Minister authorizes the Corporation to collect, as agent of the Minister, duties in respect of mail and the Corporation agrees to collect the duties as agent of the Minister.
- (4) **Terms and conditions.**—An agreement made under subsection (3) relating to the collection of duties in respect of mail may provide for the terms and conditions under which and the period during which the Corporation is authorized to collect the duties and for other matters in relation to the administration of this Act in respect of such mail.
- (5) **Authorization by Corporation.**—The Corporation may authorize in writing any person to collect, as its agent, duties under terms and conditions consistent with those provided for in the agreement made under subsection (3) and during a period not exceeding the period provided for in that agreement.
- (6) Liability to pay duties.—Where the Corporation has entered into an agreement under subsection (3), the Corporation shall pay to the Receiver General, within the prescribed time and in the prescribed manner, as an amount due to Her Majesty in right of Canada in respect of mail to which the agreement applies, the greater of the duties collected by the Corporation in respect of the mail and the duties required to be collected in respect of the mail by the Corporation under the agreement, unless
 - (a) the Corporation establishes to the satisfaction of the Minister that the mail has not been delivered and that the mail
 - (i) is no longer in Canada, or
 - (ii) was destroyed;
 - (b) duties have not been collected by the Corporation in respect of the mail, the mail has not been delivered and a request for a re-determination or re-appraisal has been made under section 60 in respect of the mail; or
 - (c) in any other case, duties have not been collected by the Corporation in respect of the

mail, the mail has not been delivered and the period in which a request for a redetermination or re-appraisal may be made under section 60 in respect of the mail has not expired.

- (7) **Not public money.**—An amount required to be paid to the Receiver General under subsection (6) shall be deemed not to be public money for the purposes of the *Financial Administration Act* until the amount has been so paid.
- (8) Interest.—Where an amount that the Corporation is required to pay under subsection (6) has not been paid within the time within which it is required to be paid under that subsection, the Corporation shall pay to the Receiver General, in addition to that amount, interest at the specified rate for the period beginning on the first day after that time and ending on the day the amount has been paid in full, calculated on the outstanding balance of the amount.
- (9) **Detention of mail.**—Any person who is authorized to collect duties in respect of mail may detain the mail until the duties thereon have been paid to the Corporation.
- (10) **Fees.**—Subject to any regulations made under subsection (14), mail is charged with prescribed fees from the time of its importation until such time as the fees are paid or as the fees are otherwise removed.
- (11) **Payment of fees.**—The importer or owner of mail that is charged with fees under subsection (10) shall pay the fees at the time of the payment of the duties on the mail.
- (12) **Collection of fees.**—Where the Corporation or an agent of the Corporation is authorized to collect duties in respect of mail, the Corporation or the agent may collect the fees with which the mail is charged under subsection (10) and may detain the mail until the fees have been paid.
- (13) **Fees belong to Corporation.**—Fees collected under subsection (12) are property of the Corporation and shall be deemed not to be public money for the purposes of the *Financial Administration Act*.
 - (14) **Regulations.**—The Governor in Council may make regulations
 - (a) prescribing times for the purposes of subsection (6);
 - (b) prescribing the manner of payment for the purposes of subsection (6);
 - (c) prescribing fees for the purposes of subsection (10);
 - (d) prescribing mail that is not charged with fees under subsection (10) or prescribing circumstances in which mail is not charged with fees under that subsection; and
 - (e) prescribing mail to which any of subsections (3) to (13) does not apply or prescribing circumstances in which any of those subsections does not apply to mail. S.C. 1992, s. 28, s. 29.

Evidence

- **148.** (1) **Proof of service by registered mail.** —Where a notice required by this Act or a regulation is sent by registered mail, an affidavit of an officer sworn before a commissioner or other person authorized to take affidavits setting out
 - (a) that the officer has charge of the appropriate records,
 - (b) that he has knowledge of the facts in the particular case,
 - (c) that such a notice was sent by registered letter on a named day to the person to whom it was addressed (indicating such address), and

(d) that he identifies as exhibits attached to the affidavit the post office certificate of registration of the letter or a true copy of the relevant portion thereof and a true copy of the notice

shall be received, in the absence of evidence to the contrary, as proof of the sending and of the notice.

- (2) **Proof of personal service.**—Where a notice required by this Act or a regulation is given by personal service, an affidavit of an officer sworn before a commissioner or other person authorized to take affidavits setting out
 - (a) that the officer has charge of the appropriate records,
 - (b) that he has knowledge of the facts in the particular case,
 - (c) that such a notice was served personally on a named day on the person to whom it was directed, and
- (d) that he identifies as an exhibit attached to the affidavit a true copy of the notice shall be received, in the absence of evidence to the contrary, as proof of the personal service and of the notice.
- 149. Date of notice by mail.—For the purposes of this Act, the date on which a notice is given pursuant to this Act or the regulations shall, where it is given by mail, be deemed to be the date of mailing of the notice, and the date of mailing shall, in the absence of any evidence to the contrary, be deemed to be the day appearing from such notice to be the date thereof unless called into question by the Minister or by some person acting for him or Her Majesty.
- **150.** Copies of documents.—Copies of documents made pursuant to this or any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods or pursuant to any regulation made thereunder that are duly certified by an officer are admissible in evidence in any proceeding taken pursuant to this Act in the same manner as if they were the originals of such documents.
- 151. False information in documents.—In any proceeding taken pursuant to this Act, the production or the proof of the existence of more than one document made or sent by or on behalf of the same person in which the same goods are mentioned as bearing different prices or given different names or descriptions is, in the absence of evidence to the contrary, proof that any such document was intended to be used to evade compliance with this Act or the payment of duties under this Act.
- 152. (1) Burden of proof of importation or exportation on Her Majesty.—In any proceeding under this Act relating to the importation or exportation of goods, the burden of proof of the importation or exportation of the goods lies on Her Majesty.
- (2) **Proof of importation.**—For the purpose of subsection (1), proof of the foreign origin of goods is, in the absence of evidence to the contrary, proof of the importation of the goods.
- (3) **Burden of proof on other party.**—Subject to subsection (4), in any proceeding under this Act, the burden of proof in any question relating to
 - (a) the identity or origin of any goods,
 - (b) the manner, time or place of importation or exportation of any goods,
 - (c) the payment of duties on any goods, or
 - (d) the compliance with any of the provisions of this Act or the regulations in respect of any goods

lies on the person, other than Her Majesty, who is a party to the proceeding or the person who is accused of an offence, and not on Her Majesty.

(4) **Exception in case of prosecution.**—In any prosecution under this Act, the burden of proof in any question relating to the matters referred to in paragraphs (3)(a) to (d) lies on the person who is accused of an offence, and not on Her Majesty, only if the Crown has established that the facts or circumstances concerned are within the knowledge of the accused or are or were within his means to know.

Prohibitions, Offences and Punishment

GENERAL.

153. False statements, evasion of duties.—No person shall

- (a) make, or participate in, assent to or acquiesce in the making of, false or deceptive statements in a statement or answer made verbally or in writing pursuant to this Act or the regulations;
- (a.1) make, or participate in, assent to or acquiesce in the making of, false or deceptive statements in an application for an advance ruling under section 43.1 or a certificate referred to in section 97.01 or 97.1;
- (b) to avoid compliance with this Act or the regulations,
 - (i) destroy, alter, mutilate, secrete or dispose of records or books of account,
 - (ii) make, or participate in, assent to or acquiesce in the making of, false or deceptive entries in records or books of account, or
 - (iii) omit, or participate in, assent to or acquiesce in the omission of, a material particular from records or books of account; or
- (c) wilfully, in any manner, evade or attempt to evade compliance with any provision of this Act or evade or attempt to evade the payment of duties under this Act. S.C. 1988, c. 65, s. 80; S.C. 1993, c. 44, s. 105.
- **154.** Misdescription of goods in accounting documents.—No person shall include in any document used for the purpose of accounting under section 32 a description of goods that does not correspond with the goods so described.
- 155. Keeping, acquiring, disposing of goods illegally imported.—No person shall, without lawful authority or excuse, the proof of which lies on him, have in his possession, purchase, sell, exchange or otherwise acquire or dispose of any imported goods in respect of which the provisions of this or any other Act of Parliament that prohibits, controls or regulates the importation of goods have been contravened.
- 156. Possession of blank documents.—No person shall, without lawful authority or excuse, the proof of which lies on him, send or bring into Canada or have in his possession any form, document or other writing that is wholly or partly blank and is capable of being completed and used in accounting for imported goods pursuant to this Act, where the form, document or other writing bears any certificate, signature or other mark that is intended to show that such form, document or writing is correct or authentic.
- **157.** Opening and unpacking goods; breaking seals.—No person shall, without lawful authority or excuse, the proof of which lies on him,
 - (a) open or unpack, or cause to be opened or unpacked, any package of imported goods that has not been released; or

- (b) break or tamper with, or cause to be broken or tampered with, any seals, locks or fastenings that have been placed on goods, conveyances, bonded warehouses or duty free shops pursuant to this Act or the regulations.
- 158. Officers, etc., of corporations.—Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.
- **159.** Smuggling.—Every person commits an offence who smuggles or attempts to smuggle into Canada, whether clandestinely or not, any goods subject to duties, or any goods the importation of which is prohibited, controlled or regulated by or pursuant to this or any other Act of Parliament.
 - 159.1 Offences re marking of goods.—Every person commits an offence who
 - (a) fails to mark imported goods in the manner referred to in section 35.01;
 - (b) marks imported goods in a deceptive manner so as to mislead another person as to the country or geographic origin of the goods; or
 - (c) with intent to conceal the information given by or contained in the mark, alters, defaces, removes or destroys a mark on imported goods made pursuant to the regulations made under subsection 63.1(2) of the *Customs Tariff*. S.C. 1993, c. 44, s. 106.
- **160.** General offence and punishment.—Every person who contravenes section 12, 13, 15 or 16, subsection 20(1), section 31 or 40, subsection 43(2), 95(1) or (3), 103(3) or 107(1) or section 153, 155 or 156 or commits an offence under section 159 or 159.1
 - (a) is guilty of an offence punishable on summary conviction and liable to a fine of not more than fifty thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment; or
 - (b) is guilty of an indictable offence and liable to a fine of not more than five hundred thousand dollars or to imprisonment for a term not exceeding five years or to both that fine and that imprisonment. S.C. 1993, c. 25, s. 88; S.C. 1993, c. 44, s. 107.
- 161. Summary conviction offence and punishment.—Every person who contravenes any of the provisions of this Act not otherwise provided for in section 160 is guilty of an offence punishable on summary conviction and liable to a fine of not more than two thousand dollars and not less than two hundred dollars or to imprisonment for a term not exceeding six months or to both fine and imprisonment.

Procedure

- **162. Venue.**—A prosecution for an offence under this Act may be instituted, heard, tried or determined in the place in which the offence was committed or in which the subject-matter of the prosecution arose or in any place in which the accused is apprehended or happens to be.
- **163.** Limitation period in summary convictions.—Proceedings may be instituted by way of summary conviction in respect of offences under this Act at any time within but not later than three years after the time when the subject-matter of the proceedings arose.

Proceeds of Crime

163.1 (1) Possession of property obtained by certain offences. -No person shall

possess any property or any proceeds of any property knowing that all or any part of the property or of those proceeds was obtained or derived directly or indirectly as a result of

- (a) the commission of an offence contrary to section 153 or under section 159, in relation to spirits or tobacco products, or under section 163.2; or
- (b) a conspiracy or an attempt to commit, being a party to, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a).
- (2) Punishment.—Every person who contravenes subsection (1)
- (a) is guilty of an indictable offence and liable to a fine of not more than five hundred thousand dollars or to imprisonment for a term not exceeding five years or to both that fine and that imprisonment; or
- (b) is guilty of an offence punishable on summary conviction and liable to a fine of not more than fifty thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment. S.C. 1993, c. 25, s. 89.
- 163.2 (1) Laundering proceeds of certain offences.—No person shall use, transfer the possession of, send or deliver to any person or place, transport, transmit, alter, dispose of or otherwise deal with, in any manner or by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds and knowing that all or part of that property or those proceeds was obtained or derived directly or indirectly as a result of
 - (a) the commission of an offence contrary to section 153 or under section 159, in relation to spirits or tobacco products; or
 - (b) a conspiracy or an attempt to commit, being a party to, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a).
 - (2) **Punishment.**—Every person who contravenes subsection (1)
 - (a) is guilty of an indictable offence and liable to a fine of not more than five hundred thousand dollars or to imprisonment for a term not exceeding five years or to both that fine and that imprisonment; or
 - (b) is guilty of an offence punishable on summary conviction and liable to a fine of not more than fifty thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment. S.C. 1993, c. 25, s. 89.
- **163.3** (1) **Part XII.2** of the *Criminal Code* applicable.—Sections 462.3 and 462.32 to 462.5 of the *Criminal Code* apply, with such modifications as the circumstances require, in respect of proceedings for an offence contrary to section 153 or under section 159, in relation to spirits or tobacco products, or under section 163.1 or 163.2.
- (2) **Idem.**—For the purposes of subsection (1), the references in sections 462.37 and 462.38 and subsection 462.41(2) of the *Criminal Code* to an enterprise crime offence shall be deemed to include references to the offences referred to in subsection (1). S.C. 1993, c. 25, s. 89.

PART VII

REGULATIONS

- **164.** (1) **Regulations.**—The Governor in Council may make regulations
- (a) authorizing a designated officer or class of officers to exercise powers or perform

duties of the Minister, including judicial or quasi-judicial functions of the Minister, under this Act:

- (b) requiring, in such circumstances as may be prescribed, the owner or person in charge of a conveyance to give notice of the time and place of its arrival in Canada and such other information relating to its passengers or its movement inside or outside Canada as may be prescribed, and prescribing the time within which and the manner in which such notice is to be given;
- (c) designating certain classes of goods as ships' stores for use on board a conveyance within such class of conveyances as may be prescribed and limiting the quantity of such goods that may be so used within such period of time as may be prescribed;
- (d) authorizing the collection of information or evidence in order to facilitate the determination of whether any duties are owing or may become owing on imported goods and the amount of such duties;
- (e) prescribing the conditions under which non-residents may import goods, including the bonds or other security that may be required, defining the term "non-residents" for the purpose of this paragraph and exempting any person or class of persons or any goods or class of goods from the application of such conditions;
- (f) prescribing the methods to be followed in determining the tariff classification of sugar, molasses and sugar syrup, and specifying the instruments, standards and appliances to be used in such determinations;
- (g) prescribing the manner of ascertaining the alcoholic content of wines, spirits or alcoholic liquors for the purpose of determining the tariff classification thereof;
- (h) prescribing how the coasting trade shall be regulated in any case or class of cases and exempting any case or class of cases, subject to any condition that the Governor in Council sees fit to impose, from any of the requirements of this Act that the Governor in Council deems it inexpedient to enforce with respect to vessels engaged in such trade;
- (h.1) defining any term or expresssion that is by any provision of this Act to have a meaning assigned by regulation;
- (i) prescribing anything that is by any provision of this Act to be prescribed by the Governor in Council; and
- (j) generally, to carry out the purposes and provisions of this Act.
- (1.1) **Idem.**—The Governor in Council may, on the recommendation of the Minister, make regulations for the purpose of the uniform interpretation, application and administration of Chapters Three and Five of NAFTA and any other matters, as may be agreed on from time to time by the NAFTA countries.
- (2) **Regulations prescribing rate of interest.**—The Governor in Council may, on the recommendation of the Minister of Finance, make regulations prescribing a rate of interest or rules for determining a rate of interest for the purposes of any provision of this Act.
- (3) **Publication of proposed regulations.**—Subject to subsection (4), a copy of each regulation that the Governor in Council proposes to make under subsection (1) shall be published in the *Canada Gazette* at least sixty days before the proposed effective date thereof and a reasonable opportunity shall be afforded to interested persons to make representations with respect thereto.
 - (4) Exceptions.—No proposed regulation need be published under subsection (3) that
 - (a) grants an exemption or relieves a restriction;

- (a.01) implements, in whole or in part, a provision of NAFTA;
- (a.1) implements, in whole or in part, a provision of the Canada-United States Free Trade Agreement;
- (a.2) gives effect, in whole or in part, to a public announcement made on or before the proposed effective date of the proposed regulation;
- (b) establishes or amends a fee:
- (c) has been published pursuant to subsection (3) whether or not it has been altered or amended after such publication as a result of representations made by interested persons as provided in that subsection; or
- (d) makes no material substantive change in an existing regulation. S.C. 1988, c. 65, s. 81; S.C. 1992, c. 28, s. 30; S.C. 1992, c. 31, s. 22; S.C. 1993, c. 44, s. 108.
- 165. Prohibition or regulation of importation.—Where at any time it appears to the satisfaction of the Governor in Council on a report from the Minister that goods, the exportation of which from any country is the subject of an arrangement or commitment between the Government of Canada and the government of that country, are being imported in a manner that circumvents the arrangement or commitment, the Governor in Council may, by regulation, prohibit or otherwise control the importation of goods to which the arrangement or commitment relates.
 - **166.** (1) **Bonds and security.**—The Governor in Council may make regulations
 - (a) prescribing the amount or authorizing the Minister to determine the amount of any bond, security or deposit required to be given under this Act or the regulations; and
 - (b) prescribing the nature and the terms and conditions of any such bond, security or deposit.
- (2) Forms.—All bonds required under this Act shall be in a form satisfactory to the Minister.
 - **167.** (1) **Special services.**—The Governor in Council may make regulations prescribing
 - (a) what services performed by officers at the request of a person in charge of imported goods or goods destined for exportation shall be considered to be special services;
 - (b) the charges, if any, that are payable for special services by the person requesting them; and
 - (c) the terms and conditions on which special services shall be performed, including the taking of such bonds or other security as may be prescribed.
- (2) **Deeming provision.**—Anything that is required under this Act or the regulations to be done at a customs office, sufferance warehouse, bonded warehouse or duty free shop that is done at another place as a result of a special service shall be deemed, for the purposes of this Act or the regulations, to have been done at a customs office, sufferance warehouse, bonded warehouse or duty free shop, as the case may be.
- **167.1 Retroactive effect.**—Where a regulation made under a provision of this Act provides that the regulation is to come into force on a day earlier than the day it is registered under section 6 of the *Statutory Instruments Act*, the regulation shall come into force on that earlier day if the regulation
 - (a) has a relieving effect only;
 - (b) gives effect, in whole or in part, to a public announcement made on or before that earlier day;

- (c) corrects an ambiguous or deficient enactment that was not made in accordance with the objects of this Act or the regulations made by the Governor in Council under this Act; or
- (d) is consequential on an amendment to this Act that is applicable before the day the regulation is registered under section 6 of the *Statutory Instruments Act*. S.C. 1992, c. 28, s. 31.

PARLIAMENTARY REVIEW

- **168.** (1) **Permanent review by Parliamentary Committee.**—The administration of this Act shall be reviewed on a permanent basis by such committee of the Senate, of the House of Commons or of both Houses of Parliament as may be designated or established for that purpose.
- (2) **Review and report after five years.**—The committee designated or established for the purpose of subsection (1) shall, within five years after the coming into force of this Act, undertake a comprehensive review of the provisions and operation of this Act, and shall, within a reasonable period thereafter, cause to be laid before each House of Parliament a report thereon.

TRANSITIONAL.

- **169.** (1) **Definition of "former Act".**—In this section, "former Act" means the *Customs Act*, chapter C-40 of the Revised Statutes of Canada, 1970.
- (2) **Pending proceedings under former Act.**—Any proceedings instituted under the former Act before the commencement of this Act shall be continued and completed as if this Act and any regulations made hereunder had not been enacted.
- (3) Amounts owing under former Act.—Sections 143 to 147 apply in respect of any amount owing to Her Majesty in right of Canada under the former Act or any regulations made thereunder unless legal proceedings have been instituted under section 102 of the former Act in respect thereof.
- (4) Goods detained under former Act.—Section 102 applies in respect of goods detained under subsection 22(2) of the former Act if such goods are in the custody of an officer at the time this Act comes into force.

CONSEQUENTIAL AMENDMENTS

170 to 213. [Consequential amendments are not included here.]

COMING INTO FORCE

214. Commencement.—This Act or any provision thereof shall come into force on a day or days to be fixed by proclamation.

[Note: The Schedules to the Act are not reproduced here.]

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ABATEMENT OF DUTIES PAYABLE REGULATIONS

SOR/86-946

Regulations respecting the abatement of duties on imported goods that have suffered damage, deterioration or destruction or a loss in volume or weight

SHORT TITLE

1. These Regulations may be cited as the Abatement of Duties Payable Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act; (Loi)
- "qualified appraiser".—"qualified appraiser" means a person who, in relation to any goods, is qualified by virtue of his business, occupation or profession to appraise those goods and to appraise the loss in value thereto where the goods have suffered damage, deterioration or destruction. (appréciateur qualifié)

DETERMINATION OF AMOUNT OF ABATEMENT

- **3.** (1) The amount of an abatement of duties that may be granted on imported goods that have suffered damage, deterioration or destruction from the time of shipment to Canada to the time of release shall be
 - (a) in the case of perishable goods or brittle goods such as crockery, china, glass and glassware, an amount equal to that proportion of the duties otherwise payable on the goods that 85 per cent of the loss in value of the goods is of the value for duty of the goods;
 - (b) in the case of sugar or any other saccharine product on which duty is determined according to the polarimetric test and that has suffered damage or deterioration from salt water, an amount equal to the difference between
 - (i) the duties otherwise payable on the goods, and
 - (ii) the duties that would be payable on the goods if, after the percentage of polarization of the goods is determined, there is deducted from that percentage an amount equal to five times the percentage of salt present in that portion of the water found in the damaged goods that is in excess of the water found in samples of undamaged goods, as certified by an officer authorized to test such sample; and
 - (c) in the case of any other goods, an amount equal to that proportion of the duties otherwise payable on the goods that the loss in value of the goods is of the value for duty of the goods.
 - (2) The determination of the loss in value of goods shall be made by a qualified appraiser.
- **4.** (1) Subject to subsection (2), the amount of an abatement of duties that may be granted on imported bulk wines and spirits that have suffered a loss in volume or weight arising from natural causes while in a bonded warehouse shall be an amount equal to that proportion of the

duties otherwise payable on the goods that the loss in volume or weight is of the volume or weight of the goods when originally warehoused.

(2) No abatement of duties shall be granted under subsection (1) in respect of any loss in volume or weight in excess of one sixth of one per cent of the original volume or weight multiplied by the number of months that have elapsed since the date of original warehousing or eight per cent of the original volume or weight, whichever is the lesser.

ABATEMENT NOT TO BE GRANTED

- 5. No abatement of duties shall be granted in respect of
- (a) goods for which there is a manufacturer's or producer's recommended shelf life period or allowable storage-before-use period if the goods have suffered damage or deterioration by reason of the expiration of that period;
- (b) iron or steel or any manufacture thereof that has suffered damage or deterioration by reason of rust; or
- (c) packages of liquids that have suffered damage or deterioration, where the damage or deterioration is confined to the package and does not extend to the liquid contents thereof.

ACCOUNTING FOR IMPORTED GOODS AND PAYMENT OF DUTIES REGULATIONS

SOR/86-1062, as am. SOR/88-515; SOR/90-615; SOR/91-83; SOR/91-274; SOR/91-280; SOR/92-128; SOR/92-129; SOR/92-409; SOR/92-410; SOR/93-555.

Regulations Respecting the Accounting for Imported Goods and the Payment of Duties

SHORT TITLE

1. These Regulations may be cited as the Accounting for Imported Goods and Payment of Duties Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act:
- "A.T.A. Carnet".— "A.T.A. Carnet" means an A.T.A. (Admission Temporaire—Temporary Admission) Carnet referred to in the International Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods;
- "billing period".—"billing period" means the period during which commercial goods are accounted for, beginning on the 25th day of any given month and ending on the 24th day of the following month;
- "business day".—"business day" means a day other than Saturday or a holiday:
- "CADEX".—"CADEX" means the Customs Automated Data Exchange System;
- "casual goods".—"casual goods" means goods imported into Canada other than commercial goods;
- "chief officer of customs".—"chief officer of customs", with respect to an area or place, means the manager of the customs office or customs offices that serve that area or place;
- "commercial goods".—"commercial goods" means goods imported into Canada for sale or for any commercial, industrial, occupational, institutional or other like use;
- "customs invoice".—"customs invoice" means a customs invoice in the prescribed form;
- "intoxicating liquor".—"intoxicating liquor" has the same meaning as in the Importation of Intoxicating Liquors Act;
- "release period".—"release period"
 - (a) in respect of the release of intoxicating liquors that are imported by a department, board, commission or agency of the government of a province, means the period beginning on Sunday of the week in which the liquors are released and ending on Saturday of the following week; and
 - (b) in respect of the release of goods imported as mail, means the period beginning on the first day of the month in which the goods are released and ending on the last day of that month;

"vessel".—"vessel" means any of the goods described in Chapter 89 of the *Customs Tariff*. SOR/88-515: SOR/91-83; SOR/92-129; SOR/92-410.

PART I—ACCOUNTING FOR AND RELEASE OF GOODS UNDER SECTION 32, 33 OR 35 OF THE ACT

GENERAL MANNER OF ACCOUNTING

- 3. (1) Except as otherwise provided for in the Act or these Regulations, every person required by subsection 32(1), (3) or (5) of the Act to account for goods shall do so
 - (a) in writing, in the prescribed form containing the prescribed information, at the customs office from which the goods were released or are to be released; or
 - (b) by CADEX, to a customs office to which the accounting required under subsection 32(1), (3) or (5) of the Act may be electronically transmitted.
- (2) Except as otherwise provided for in the Act or these Regulations, every person required by subsection 32(2) of the Act to make an interim accounting in respect of goods shall do so in writing, in the prescribed form containing the prescribed information, at the customs office from which the goods are to be released. SOR/88-515.
 - 4. [Revoked SOR/92-411]

GENERAL REQUIREMENTS RESPECTING THE ACCOUNTING FOR AND PAYMENT OF DUTIES ON CASUAL GOODS

- 5. Every person who accounts for casual goods under subsection 32(1), (3) or (5) of the Act shall provide, at the time of accounting and before the goods are released, if the goods have not been released before that time, a commercial invoice, current price list, bill of sale or other similar document that describes the goods and contains information sufficient to enable an officer to determine the tariff classification and appraise the value for duty of the goods. SOR/88-515.
- **5.1** (1) Subject to subsection (2) and sections 7 and 8, casual goods may be released prior to the payment of duties thereon, if the importer or owner of the goods provides, as conditional payment of an amount equal to the amount of these duties
 - (a) a remittance by credit card in respect of which the importer or owner of the goods is the cardholder or authorized user, where the user of the credit card has entered into an agreement with the Government of Canada establishing the conditions of its acceptance and use; or
 - (b) a traveller's cheque, a money order or a certified cheque. SOR/88-515.
- (2) Where casual goods are released prior to the unconditional payment of duties thereon, the person who accounted for the goods shall pay the duties thereon within 5 days after their release.

GENERAL REQUIREMENTS RESPECTING THE ACCOUNTING FOR COMMERCIAL GOODS

- 6. Every person who accounts for commercial goods under subsection 32(1), (3) or (5) of the Act shall provide, at the time of accounting and before the goods are released, if the goods have not been released before that time,
 - (a) in the case of goods that have an estimated value for duty of \$1,200 or more,

- (i) a completed customs invoice,
- (ii) the commercial invoice, where the invoice contains the same information as would a completed customs invoice, or
- (iii) the commercial invoice and a partially completed customs invoice, where together they contain the same information as would a completed customs invoice; and
- (b) in the case of goods that have an estimated value for duty of less than \$1,200, a commercial invoice, current price list, bill of sale or other similar document that describes the goods, denotes the number of units being imported and contains information sufficient to enable an officer to determine the tariff classification and appraise the value for duty of the goods. SOR/90-615.

RELEASE WITHOUT ACCOUNTING

- 7. (1) Subject to subsection (3), the following goods may be released without any requirement of accounting under section 32 of the Act if the goods are not charged with duties and may be reported orally under the *Reporting of Imported Goods Regulations*:
 - (a) [Revoked SOR/92-410]
 - (b) goods, other than vessels, classified under tariff item No. 9801.00.00 or 9803.00.00 of the *Customs Tariff*;
 - (c) commercial conveyances manufactured in Canada that are classified under tariff item No. 9813.00.00 of the *Customs Tariff*;
 - (d) commercial conveyances previously accounted for in Canada under the *Customs Act* that are classified under tariff item No 9814.00.00 of the *Customs Tariff*;
 - (e) goods eligible for temporary importation under cover of a Temporary Importation Document in the prescribed form or under an A.T.A. Carnet;
 - (f) goods classified under tariff item No. 9804.10.00 or 9804.40.00 of Schedule I to the *Customs Tariff*; and
 - (g) goods classified under tariff item No. 9816.00.00 of Schedule I to the *Customs Tariff*, where the goods are not imported as mail.
- (2) Subject to subsection (3), the following goods may be released without any requirement of accounting under section 32 of the Act if the goods are not charged with duties:
 - (a) locomotives and railway rolling stock classified under code 2335, 2336, 2337 or 2338 of Schedule II to the *Customs Tariff*;
 - (b) vessels classified under tariff item No. 9801.00.00 or 9803.00.00 of the *Customs Tariff*; and
 - (c) goods classified under tariff item No. 9813.00.00 or 9814.00.00 of the *Customs Tariff* that form part of the baggage of a person arriving in Canada, whether or not the person and the baggage are carried on board the same conveyance.
- (2.1) Subject to subsection (3), the following goods may be released without any requirement of accounting under section 32 of the Act:
 - (a) goods to which the Postal Imports Remission Order or the Courier Imports Remission Order applies; and
 - (b) goods imported as mail and classified under tariff item No. 9816.00.00 of Schedule I to the *Customs Tariff*.

(3) Good may be released in accordance with subsection (1), (2) or (2.1) on condition that the importer or owner of the goods provides, prior to the release of the goods, every certificate, licence, permit or other document and any information that is required to be provided under any Act of Parliament that prohibits, controls or regulates the importation of goods or a regulation made pursuant to such an Act. SOR/88-515; SOR/92-410.

RELEASE OF GOODS IMPORTED AS MAIL

- **8.** Goods imported as mail may be released under subsection 32(4) of the Act prior to the accounting required under subsection 32(5) of the Act and prior to the payment of duties thereon and without the giving of security pursuant to section 35 of the Act, except where the goods
 - (a) are commercial goods that have an estimated value for duty of \$1,200 or more; or
 - (b) are prohibited, controlled or regulated by an Act of Parliament that prohibits, controls or regulates the importation of goods or a regulation made pursuant to such an Act. SOR/92-410.
- **8.1** (1) Notwithstanding section 9, where goods imported as mail are commercial goods that have an estimated value for duty of \$1,200 or more, the goods may not be released before the importer or owner thereof
 - (a) has accounted for the goods in the manner described in paragraph 32(1)(a) of the Act and has paid duties theron in accordance with subsection (2); and
 - (b) has provided an officer with every certificate, licence, permit or other document and any information that is required to be provided under any Act of Parliament that prohibits, controls or regulates the importation of goods or a regulation made pursuant to such an Act.
- (2) Where goods imported as mail are commercial goods that have an estimated value for duty of \$1,200 or more, the importer or owner thereof shall account for the goods in the manner described in paragraph 32(1)(a) of the Act and pay duties thereon with 21 days after the day of their importation. SOR/92-410.
- **8.2** Subsections 147.1(3) to (13) of the Act do not apply to mail where the goods imported as mail are
 - (a) goods not charged with duties;
 - (b) goods in respect of which all the duties are remitted;
 - (c) goods classified under tariff item No. 9816.00.00 of Schedule I to the *Customs Tariff*; or
 - (d) commercial goods that have an estimated value for duty of 1,200 or more. SOR/92-410.
- **8.3** The Canada Post Corporation shall pay, by cash or certified cheque, the duties required under subsection 147.1(6) of the Act, to be paid in respect of goods imported as mail not later than the last business day of the month following the month in which the release period ended. SOR/92-410.

RELEASE OF AND INTERIM ACCOUNTING FOR COMMERCIAL GOODS

9. Subject to sections 7, 12, 14 and 16, commercial goods may be released under subsection 32(2) of the Act prior to the accounting required under subsection 32(1) of the Act

and may, pursuant to section 33 of the Act, be so released prior to the payment of the duties thereon on condition that

- (a) the importer or owner of the commercial goods gives or has given security in accordance with section 11; and
- (b) the importer or owner of the commercial goods makes the interim accounting referred to in subsection 32(2) of the Act. SOR/88-515; SOR/83-555.
- 10. (1) Where commercial goods are released under subsection 32(2) of the Act in accordance with section 9, the person required by the Act to account for the goods shall do so in the manner described in paragraph 32(1)(a) of the Act
 - (a) within three business days after the termination of the release period, in the case of intoxicating liquors that are imported by a department, board, commission or agency of the government of a province; and
 - (b) on the fifteenth business day after final accounting.
- (2) Any goods imported by a person referred to in paragraph (1)(a) shall be accounted for at a customs office specified by the Deputy Minister. SOR/88-515; SOR/91-83; SOR/91-280.
- **10.1** Where commercial goods are released under section 33 of the Act in accordance with section 9, the person required to pay duties thereon shall do so no later than the last business day of the month in which the billing period for those commercial goods ends. SOR/91-83; SOR/92-129; SOR/93-555.

SECURITY FOR RELEASE OF COMMERCIAL GOODS

- 11. (1) The security required under paragraph 9(a) shall be in the form of
- (a) cash;
- (b) a certified cheque;
- (c) a transferable bond issued by the Government of Canada;
- (d) a bond issued by
 - (i) a company that is registered and holds a certificate of registry to carry on the fidelity or surety class of insurance business and that is approved by the President of the Treasury Board as a company whose bonds may be accepted by the Government of Canada.
 - (ii) a member of the Canadian Payments Association referred to in section 4 of the Canadian Payments Association Act,
 - (iii) a corporation that accepts deposits insured by the Canada Deposit Insurance Corporation or the *Régie de l'assurance-dépôts du Québec* to the maximum permitted by the statutes under which those institutions were established,
 - (iv) a credit union as defined in paragraph 137(6)(b) of the Income Tax Act, or
 - (v) a corporation that accepts deposits from the public, if repayment of the deposits is guaranteed by Her Majesty in right of a province; or
- (e) where the goods are commercial goods imported as mail, on which the duties payable are less than \$500, a remittance by credit card in respect of which the importer or owner of the goods is the cardholder or authorized user, where the issuer of the credit card has entered into an agreement with the Government of Canada establishing the conditions of the acceptance and use of that credit card.

- (2) Subject to subsection (3), the security required under paragraph 9(a) shall be
- (a) in an amount determined by the Minister; and
- (b) deposited with an officer at the customs office where the goods are to be released.
- (3) Where a person intends to request the release of goods on a continuing basis, a general security of an amount that is determined by the Minister shall be deposited with
 - (a) the chief officer of customs, where the person intends to request the release of goods from one customs office only;
 - (b) each chief officer of customs, where the person intends to request the release of goods from more than one customs office; or
 - (c) the Deputy Minister, where the person intends to request the release of goods from more than one customs office and does not deposit a general security with each applicable chief officer of customs. SOR/91-274; SOR/92-128; SOR/92-410; SOR/93-555.

RELEASE OF AND INTERIM ACCOUNTING FOR COMMERCIAL GOODS WHERE INFORMATION IS DEFICIENT

- 12. (1) Subject to subsection (2), where the importer or owner of commercial goods cannot account for the goods in the manner described in paragraph 32(1)(a) of the Act for the reason only that the prescribed information is not available to that importer or owner, the goods may be released under subsection 32(2) of the Act prior to the accounting required under subsection 32(1) of the Act and may, pursuant to section 33 of the Act, be so released prior to the payment of the duties thereon on condition that the importer or owner of the goods
 - (a) makes the interim accounting required under subsection 32(2) of the Act and provides, at the time of the interim accounting, information and evidence sufficient to enable an officer to determine provisionally the tariff classification and estimate the value for duty of the goods; and
 - (b) deposits with an officer, at the customs office where the release is requested, an amount equal to the aggregate of
 - (i) an amount estimated by the officer to be the amount of duties payable, and
 - (ii) ten per cent of the value for duty of the goods as estimated by the officer, but not less than one hundred dollars and not exceeding one thousand dollars.
 - (2) The conditions set out in paragraph (1)(a) and (b) do not apply where
 - (a) in the case of used goods or goods unconditionally free of duties, a determination of the tariff classification and an appraisal of the value for duty of the goods is made by an officer pursuant to subsection 58(1) of the Act; or
 - (b) an interim accounting in respect of the goods is made pursuant to section 14.
- 13. Where commercial goods are released under subsection 32(2) of the Act in accordance with section 12, the person who made the interim accounting shall account for the goods in the manner described in paragraph 32(1)(a) of the Act and pay any duties thereon within 90 days after the day on which the interim accounting was made.

INTERIM ACCOUNTING AND RELEASE OF PLANS, DRAWINGS, BLUEPRINTS, MACHINERY AND EQUIPMENT FOR INSTALLATION, AND MILITARY EQUIPMENT

14. (1) Subject to subsection (2), the following goods may be released under subsection

32(2) of the Act prior to the accounting required under subsection 32(1) of the Act and may, pursuant to section 33 of the Act, be so released prior to the payment of duties thereon:

- (a) plans, drawings and blueprints imported for use in a construction project in Canada;
- (b) machinery and equipment imported for use in a thing being installed in Canada, where the value for duty thereof cannot readily be appraised;
- (c) military equipment imported by the Department of National Defence; and
- (d) material, components and parts imported by the Department of National Defence for use in the repair, maintenance, modification and testing of the equipment referred to in paragraph (c).
- (2) No goods referred to in subsection (1) may be released under subsection 32(2) of the Act in accordance with subsection (1) unless the importer or owner of the goods
 - (a) makes the interim accounting required under subsection 32(2) of the Act and provides, at the time of the interim accounting, information and evidence sufficient to enable an officer to determine the tariff classification and estimate the value for duty of the goods;
 - (b) deposits with an officer, at a customs office specified by the Deputy Minister, security in the form of cash or a certified cheque in an amount estimated by the officer to be the amount of duties payable; and
 - (c) undertakes to notify an officer at a customs office specified by the Deputy Minister, forthwith in writing, of
 - (i) the termination date of the construction project, in the case of goods referred to in paragraph (1)(a),
 - (ii) the termination date of the installation of the thing, in the case of goods referred to in paragraph (1)(b), or
 - (iii) the date the last shipment is received, in the case of goods referred to in paragraph (1)(c) or (d) that are part of a series of shipments. SOR/88-515.
- 15. Where goods referred to in subsection 14(1) are released under subsection 32(2) of the Act in accordance with subsection 14(1), the person who made the interim accounting shall account for the goods in the manner described in paragraph 32(1)(a) of the Act within 12 months after the applicable date as referred to in subparagraph 14(2)(c)(i), (ii) or (iii), and pay any duties thereon at the time of the accounting. SOR/88-515.

FAILURE TO ACCOUNT FOR GOODS OR PAY DUTIES WITHIN PRESCRIBED TIME

- 16. Where the importer or owner of commercial goods that have been released under subsection 32(2) of the Act fails, within the time prescribed in subsection 10(1) or section 13 or 15, to account for the goods in the manner described in paragraph 32(1)(a) of the Act or to pay the duties thereon, no other goods may be so released to that importer or owner during the period commencing on the second day after the time prescribed and
 - (a) ending on the seventh day after the day on which those goods are accounted for in the manner described in paragraph 32(1)(a) of the Act and the duties are paid, where the importer's or owner's failure constitutes the first time during the preceding three months that he has failed to so account for goods and to pay the duties thereon;
 - (b) ending on the 15th day after the day on which those goods are accounted for in the manner described in paragraph 32(1)(a) of the Act and the duties are paid, where the

importer's or owner's failure constitutes the second time during the preceding three months that he has failed to so account for goods and to pay the duties thereon; and (c) ending on the 30th day after the day on which those goods are accounted for in the manner described in paragraph 32(1)(a) of the Act and the duties are paid, where the importer's or owner's failure constitutes the third or a subsequent time during the preceding three months that he has failed to so account for goods and to pay the duties thereon.

PART II—ACCOUNTING FOR DIVERTED GOODS OR FOR GOODS FOR WHICH A CONDITIONAL REMISSION OF DUTIES IS GRANTED AND THE CONDITION IS NOT COMPLIED WITH

17. Every person required by subsection 88(1) or 89(1) or section 92 of the Act to account for goods shall do so in writing, in the prescribed form containing the prescribed information, at the customs office specified by the Deputy Minister and shall provide, at the time of accounting, information sufficient to enable an officer to determine the tariff classification and appraise the value for duty of the goods. SOR/88-515.

SCHEDULE

(Section 2)

[Revoked SOR/93-555]

AGENTS' ACCOUNTING FOR IMPORTED GOODS AND PAYMENT OF DUTIES REGULATIONS

SOR/86-944

Regulations respecting agents' accounting for imported goods and payment of duties

SHORT TITLE

1. These Regulations may be cited as the Agents' Accounting for Imported Goods and Payment of Duties Regulations.

INTERPRETATION

2. In these Regulations, "Act" means the Customs Act.

CIRCUMSTANCES IN WHICH PERSON MAY TRANSACT BUSINESS AS AGENT

- **3.** Subject to subsection 10(2) of the Act, a person may only account for goods and pay duties under section 32 of the Act as an agent of the importer or owner of the goods where the person
 - (a) is licensed to transact business as a customs broker under subsection 9(1) of the Act; or
 - (b) does so on a casual basis and without benefit of any compensation, fee or charge.

CANADIAN COMMERCIAL CORPORATION GOODS EXPORTED DRAWBACK REGULATIONS

SOR/86-794, as am. SOR/90-470.

Regulations respecting the drawback of duties paid on imported goods deemed to have been exported, and imported goods and materials where they, or the same quantity of domestic or imported goods and materials of the same class are used or consumed in the manufacture or production in Canada of goods deemed to have been exported, by virtue of their being supplied for exportation to the Canadian Commercial Corporation

SHORT TITLE

1. These Regulations may be cited as the Canadian Commercial Corporation Goods Exported Drawback Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act;
- "value".—"value" means, in respect of a product, including a by-product, or of merchantable scrap or waste,
 - (a) where the manufacturer or producer has sold the product or merchantable scrap or waste in an arm's length transaction, the price thereof, or
 - (b) in any other case, the price at which the manufacturer or producer would ordinarily have sold the product or merchantable scrap or waste in an arm's length transaction at the time the application for a drawback is filed at a customs office.

APPLICATION

- 3. These Regulations apply to the grant, under subsection 82(1) of the Act and in the circumstances prescribed in section 7, of a drawback of duties, other than duties levied under the *Special Import Measures Act* in respect of the goods described in the schedule and tax levied under the *Excise Tax Act*, paid in respect of
 - (a) imported goods,
 - (b) imported goods used in, wrought into or attached to goods manufactured or produced in Canada.
 - (c) imported materials, other than fuel or plant equipment, directly consumed or expended in the manufacture or production of goods in Canada,
 - (d) imported goods, where the same quantity of domestic or imported goods of the same class is used in, wrought into or attached to goods manufactured or produced in Canada, or
 - (e) imported materials, other than fuel or plant equipment, where the same quantity of

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domestic or imported materials of the same class is directly consumed or expended in the manufacture or production of goods in Canada,

where the imported goods referred to in paragraph (a) or the goods manufactured or produced in Canada referred to in any of paragraphs (b) to (e) are supplied for exportation to the Canadian Commercial Corporation.

DEEMED EXPORTATION

4. Imported goods referred to in paragraph 3(a) and goods manufactured or produced in Canada referred to in any of paragraphs 3(b) to (e) shall, when they are supplied for exportation to the Canadian Commercial Corporation, be deemed, pursuant to paragraph 82(2)(b) of the Act, to have been exported.

PERSON WHO MAY CLAIM

5. A drawback may only be claimed by the supplier to the Canadian Commercial Corporation of the goods deemed to have been exported.

APPLICATION FOR DRAWBACK

6. An application for a drawback shall be presented at a customs office or sent by registered mail to a customs office, in the prescribed form, within four years after the duties were paid. SOR/90-470.

CIRCUMSTANCES AND CONDITIONS

- 7. A drawback may only be granted if
- (a) the goods were deemed to have been exported before an application for the drawback is filed:
- (b) the imported goods referred to in paragraph 3(a) or the goods manufactured or produced in Canada referred to in any of paragraphs 3(b) to (e) were not used in Canada for any purpose prior to their deemed exportation;
- (c) in the case of imported goods or materials referred to in paragraph 3(d) or (e), the goods or materials were, during the twelve months immediately preceding the date of the commencement of the manufacture or production of the goods deemed to have been exported, used or consumed in the same plant in Canada in which domestic or imported goods or materials of the same class were used or consumed in the manufacture or production of the goods deemed to have been exported; and
- (d) the applicant provides a waiver, in the prescribed form, from all other persons entitled to claim a drawback, refund or remission of the duties, waiving their right to do so.

GOODS AND MATERIALS OF THE SAME CLASS

- **8.** For the purposes of paragraphs 82(1)(d) and (e) of the Act, domestic and imported goods and materials shall be considered to be of the same class if the goods or materials are so similar that they may be interchangeably
 - (a) used in, wrought into or attached to the goods manufactured or produced in Canada, in the case of goods; or

(b) directly consumed or expended in the manufacture or production of the goods manufactured or produced in Canada, in the case of materials.

REDUCTION IN RESPECT OF A BY-PRODUCT OR MERCHANTABLE SCRAP OR WASTE

- 9. (1) Where a drawback of duties paid in respect of goods or materials is granted and the goods or materials or, in the case of imported goods or materials referred to in paragraph 3(d) or (e), the same quantity of domestic or imported goods or materials of the same class enter into a process of manufacture or production that results in a by-product, the amount of the drawback shall be reduced by the same proportion that the value of the by-product is of the total value of the products that result from the processing of the goods or materials.
- (2) Where a drawback of duties paid in respect of goods or materials is granted and the goods or materials or, in the case of imported goods or materials referred to in paragraph 3(d) or (e), the same quantity of domestic or imported goods or materials of the same class enter into a process of manufacture or production that results in merchantable scrap or waste, the amount of the drawback shall be reduced by the amount obtained by applying to the value of the merchantable scrap or waste the lesser of
 - (a) the rate of duties that applies, at the time the merchantable scrap of waste results from the process, to merchantable scrap or waste of the same kind; and
 - (b) the rate of duties paid in respect of the goods or materials.

SCHEDULE

(Section 3)

1. Mold steel originating in or exported from the Federal Republic of Germany.

CANADIAN MANUFACTURED GOODS EXPORTED DRAWBACK REGULATIONS

SOR/86-877; am. SOR/88-337 (French only); SOR/90-470.

Regulations respecting the drawback of duties paid in respect of imported goods and materials used or consumed in the manufacture or production in Canada of goods subsequently exported

SHORT TITLE

1. These Regulations may be cited as the Canadian Manufactured Goods Exported Drawback Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act;
- "value".— "value" means, in respect of a product, including a by-product, or of merchantable scrap or waste,
 - (a) where the manufacturer or producer has sold the product or merchantable scrap or waste in an arm's length transaction, the price thereof, or
 - (b) in any other case, the price at which the manufacturer or producer would ordinarily have sold the product or merchantable scrap or waste in an arm's length transaction at the time the application for a drawback is filed at a customs office.

APPLICATION

- **3.** Subject to any other drawback regulations, these Regulations apply to the grant, under subsection 82(1) of the Act and in the circumstances prescribed in section 6, of a drawback of duties, other than duties levied under the *Special Import Measures Act* in respect of the goods described in the schedule, paid in respect of
 - (a) imported goods used in, wrought into or attached to goods manufactured or produced in Canada and subsequently exported;
 - (b) imported materials, other than fuel or plant equipment, directly consumed or expended in the manufacture or production in Canada of goods subsequently exported;
 - (c) imported goods, other than spirits for use in the manufacture or production in Canada of distilled spirits, where the same quantity of domestic or imported goods of the same class is used in, wrought into or attached to goods manufactured or produced in Canada and subsequently exported; and
 - (d) imported materials, other than fuel or plant equipment, where the same quantity of domestic or imported materials of the same class is directly consumed or expended in the manufacture or production in Canada of goods subsequently exported.

PERSON WHO MAY CLAIM

- 4. A drawback may only be claimed by
- (a) the manufacturer or producer of the exported distilled spirits, where imported spirits are used in the manufacture or production in Canada of distilled spirits subsequently exported; or
- (b) the exporter, manufacturer or producer of the goods subsequently exported, in any other case.

APPLICATION FOR DRAWBACK

- 5. An application for a drawback shall be presented at a customs office or sent by registered mail to a customs office, in the prescribed form,
 - (a) in the case of an application for a drawback of duties paid in respect of imported spirits used in the manufacture or production of distilled spirits subsequently exported, within five years after the duties were paid; and
 - (b) in any other case, within four years after the duties were paid. SOR/90-470.

CIRCUMSTANCES AND CONDITIONS

- 6. A drawback may only be granted if
- (a) the goods manufactured or produced in Canada were exported before an application for the drawback is filed:
- (b) the goods manufactured or produced in Canada were not used for any purpose prior to their exportation;
- (c) in the case of imported goods or materials referred to in paragraph 3(c) or (d), the goods or materials were, during the twelve months immediately preceding the date of the commencement of the manufacture or production of the exported goods, used or consumed in the same plant in Canada in which domestic or imported goods or materials of the same class were used or consumed in the manufacture or production of the exported goods; and
- (d) the applicant provides a waiver, in the prescribed form, from all other persons entitled to claim a drawback, refund or remission of the duties, waiving their right to do so.

GOODS AND MATERIALS OF THE SAME CLASS

- 7. For the purposes of paragraphs 82(1)(d) and (e) of the Act, domestic and imported goods and materials shall be considered to be of the same class if the goods or materials are so similar that they may be interchangeably
 - (a) used in, wrought into, or attached to the goods manufactured or produced in Canada and subsequently exported, in the case of goods; or
 - (b) directly consumed or expended in the manufacture or production of the goods manufactured or produced in Canada and subsequently exported, in the case of materials.

REDUCTION IN RESPECT OF A BY-PRODUCT OR MERCHANTABLE SCRAP OR WASTE

8. (1) Where a drawback of duties paid in respect of goods or materials is granted and the

SOR/86-877 Sched.

goods or materials or, in the case of imported goods or materials referred to in paragraph 3(c) or (d), the same quantity of domestic or imported goods or materials of the same class enter into a process of manufacture or production that results in a by-product, the amount of the drawback shall be reduced by the same proportion that the value of the by-product is of the total value of the products that result from the processing of the goods or materials.

- (2) Where a drawback of duties paid in respect of goods or materials is granted and the goods or materials or, in the case of imported goods or materials referred to in paragraph 3(c) or (d), the same quantity of domestic or imported goods or materials of the same class enter into a process of manufacture or production that results in merchantable scrap or waste, the amount of the drawback shall be reduced by the amount obtained by applying to the value of the merchantable scrap or waste the lesser of
 - (a) the rate of duties that applies, at the time the merchantable scrap or waste results from the process, to merchantable scrap or waste of the same kind; and
 - (b) the rate of duties paid in respect of the goods or materials.

SCHEDULE

(Section 3)

1. Mold steel originating in or exported from the Federal Republic of Germany.

CANADIAN MANUFACTURED TIRES AND TUBES (EXPORTED VEHICLES) DRAWBACK REGULATIONS

SOR/86-992, as am. SOR/88-85; SOR/90-470.

Regulations respecting the drawback of duties paid on imported goods and materials where they, or the same quantity of domestic or imported goods and materials of the same class, are used or consumed in the manufacture or production in Canada of tires or tubes sold to manufacturers in Canada for installation on motor vehicles subsequently exported

SHORT TITLE

1. These Regulations may be cited as the Canadian Manufactured Tires and Tubes (Exported Vehicles) Drawback Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act;
- "textile fabric".—"textile fabric" means textile fibre, glass fibre, textile fabric, glass fabric or other textile product of a stage between fibre and fabric composed exclusively of fibres that fall within a class set out in the schedule;
- "value".—"value" means, in respect of products, including by-products, or of merchantable scrap or waste,
 - (a) where the manufacturer or producer has sold the product or merchantable scrap or waste in an arm's length transaction, the price thereof, or
 - (b) in any other case, the price at which the manufacturer or producer would ordinarily have sold the product or merchantable scrap or waste in an arm's length transaction at the time the application for a drawback is filed at a customs office. SOR/88-85.

APPLICATION

- 3. These Regulations apply to the grant, under subsection 82(1) of the Act and in the circumstances prescribed in section 6, of a drawback of duties paid in respect of
 - (a) imported goods used in, wrought into or attached to tires or tubes manufactured or produced in Canada,
 - (b) imported materials, other than fuel or plant equipment, directly consumed or expended in the manufacture or production in Canada of tires or tubes,
 - (c) imported goods, where the same quantity of domestic or imported goods of the same class is used in, wrought into or attached to tires or tubes manufactured or produced in Canada, or
 - (d) imported materials, other than fuel or plant equipment, where the same quantity of

SOR/86-992 S. 7

domestic or imported materials of the same class is directly consumed or expended in the manufacture or production in Canada of tires or tubes,

where the tires or tubes are sold to a manufacturer in Canada of motor vehicles and are installed thereon and the motor vehicles are subsequently exported.

PERSON WHO MAY CLAIM

4. A drawback may only be claimed by the manufacturer or producer in Canada of the tires or tubes.

APPLICATION FOR DRAWBACK

5. An application for a drawback shall be presented at a customs office or sent by registered mail to a customs office, in the prescribed form, within four years after the duties were paid. SOR/90-470.

CIRCUMSTANCES AND CONDITIONS

- 6. A drawback may only be granted if
- (a) the tires or tubes manufactured or produced in Canada were exported before an application for the drawback is filed;
- (b) in the case of imported goods or materials referred to in paragraph 3(c) or (d), other than textile fabric, the goods or materials were, during the twelve months immediately preceding the date of the commencement of the manufacture or production of the exported tires or tubes, used or consumed in the same plant in Canada in which domestic or imported goods or materials of the same class were used or consumed in the manufacture or production of the exported tires or tubes;
- (c) in the case of imported textile fabric, where the same quantity of domestic or imported textile fabric of the same class was used in, wrought into or attached to the exported tires or tubes, the textile fabric was, during the twelve months immediately preceding the date of the commencement of the manufacture or production of the exported tires or tubes, used in the manufacture or production of tires or tubes in a plant in Canada of the manufacturer or producer; and
- (d) the applicant provides a waiver, in the prescribed form, from all other persons entitled to claim a drawback, refund or remission of the duties, waiving their right to do so.

GOODS AND MATERIALS OF THE SAME CLASS

- 7. (1) Subject to subsection (2), for the purposes of paragraphs 82(1)(d) and (e) of the Act, domestic and imported goods and materials shall be considered to be of the same class if the goods or materials are so similar that they may be interchangeably
 - (a) used in, wrought into, or attached to the tires or tubes manufactured or produced in Canada, in the case of goods; or
 - (b) directly consumed or expended in the manufacture or production of the tires or tubes manufactured or produced in Canada, in the case of materials.
- (2) For the purposes of paragraph 82(1)(d) of the Act, domestic and imported textile fabrics composed of different fibres shall only be considered to be of the same class if the domestic and imported textile fabrics are composed of

- (a) fibres that fall within one class set out in the schedule; or
- (b) fibres that do not fall within one class set out in the schedule, if
 - (i) any particular class set out in the schedule within which fall fibres of which the domestic textile fabric is composed;
 - (A) is a class within which fall fibres of which the imported textile fabric is composed, or
 - (B) represents less than five per cent of the weight of the domestic textile fabric; and
 - (ii) the difference between
 - (A) the proportion, expressed as a percentage, that the aggregate weight of the fibres of which the domestic textile fabric is composed that fall within any particular class set out in the schedule is of the weight of the domestic textile fabric, and
 - (B) the proportion, expressed as a percentage, that the aggregate weight of the fibres of which the imported textile fabric is composed that fall within the particular class is of the weight of the imported textile fabric

does not exceed 33 percentage points.

PROPORTION OF DUTIES THAT MAY BE GRANTED AS A DRAWBACK

8. Where the amount of duties paid in respect of imported textile fabric that is considered to be of the same class as domestic textile fabric exceeds the amount of duties that would have been payable had the domestic textile fabric been imported, the proportion of the duties so paid that may be granted as a drawback is the proportion that the amount that would have been so payable is of the amount that was so paid.

REDUCTION IN RESPECT OF A BY-PRODUCT OR MERCHANTABLE SCRAP OR WASTE

- 9. (1) Where a drawback of duties paid in respect of goods or materials is granted and the goods or materials or, in the case of imported goods or materials referred to in paragraph 3(c) or (d), the same quantity of domestic or imported goods or materials of the same class enter into a process of manufacture or production that results in a by-product, the amount of the drawback shall be reduced by the same proportion that the value of the by-product is of the total value of the products that result from the processing of the goods or materials.
- (2) Where a drawback of duties paid in respect of goods or materials is granted and the goods or materials or, in the case of imported goods or materials referred to in paragraph 3(c) or (d), the same quantity of domestic or imported goods or materials of the same class enter into a process of manufacture or production that results in merchantable scrap or waste, the amount of the drawback shall be reduced by the amount obtained by applying to the value of the merchantable scrap or waste the lesser of
 - (a) the rate of duties that applies, at the time the merchantable scrap or waste results from the process, to merchantable scrap or waste of the same kind; and
 - (b) the rate of duties paid in respect of the goods or materials.

SOR/86-992 Sched.

SCHEDULE

(Section 7)

CLASSES OF FIBRES

- 1. Natural textile fibres such as silk, wool, cotton, flax, sisal
- 2. Artificial fibres being viscose or acetates
- **3.** Synthetic fibres being nylons or other polyamides, polyesters, acrylics, polyethylene, polypropylene or elastomers
- 4. Glass. SOR/88-85.

CANADIAN TEXTILE GOODS EXPORTED DRAWBACK REGULATIONS

SOR/86-952, as. am. SOR/88-85; SOR/90-470.

Regulations respecting the drawback of duties paid on imported textile fabrics where the same quantity of domestic or imported textile fabrics of the same class is used in the manufacture or production in Canada of textile goods that are subsequently exported

SHORT TITLE

1. These Regulations may be cited as the Canadian Textile Goods Exported Drawback Regulations.

INTERPRETATION

- 2. In these Regulations,
- "textile fabric".—"textile fabric" means textile fibre, glass fibre, textile fabric, glass fabric or other textile product of a stage between fibre and fabric composed exclusively of fibres that fall within a class set out in the schedule;
- "value".—"value" means, in respect of products, including by-products, or of merchantable scrap or waste,
 - (a) where the manufacturer or producer has sold the product or merchantable scrap or waste in an arm's length transaction, the price thereof, or
 - (b) in any other case, the price at which the manufacturer or producer would ordinarily have sold the product or merchantable scrap or waste in an arm's length transaction at the time the application for a drawback is filed at a customs office. SOR/88-85.

APPLICATION

- 3. These Regulations apply to the grant, under paragraph 82(1)(d) of the *Customs Act* and in the circumstances prescribed in section 6, of a drawback of duties paid in respect of imported textile fabric, where the same quantity of domestic or imported textile fabric of the same class is used in, wrought into or attached to textile goods manufactured or produced in Canada that are
 - (a) subsequently exported; or
 - (b) used in, wrought into or attached to goods that are subsequently exported.

PERSON WHO MAY CLAIM

4. A drawback may only be claimed by the exporter, manufacturer or producer of the textile goods subsequently exported.

APPLICATION FOR DRAWBACK

5. An application for a drawback shall be presented at a customs office or sent by registered mail to a customs office, in the prescribed form, within four years after the duties were paid. SOR/90-470.

CIRCUMSTANCES AND CONDITIONS

- 6. A drawback may only be granted if
- (a) the textile goods manufactured or produced in Canada were exported before an application for the drawback is filed;
- (b) the textile goods manufactured or produced in Canada were not used for any purpose prior to their exportation;
- (c) the imported textile fabric was, during the twelve months immediately preceding the date of the commencement of the manufacture or production of the exported textile goods, used in the manufacture or production of textile goods in a plant in Canada of the manufacturer or producer; and
- (d) the applicant provides a waiver, in the prescribed form, from all other persons entitled to claim a drawback, refund or remission of the duties, waiving their right to do so.

TEXTILE FABRICS OF THE SAME CLASS

- 7. For the purposes of paragraph 82(1)(d) of the *Customs Act*, domestic and imported textile fabrics composed of different fibres shall be considered to be of the same class if the domestic and imported textile fabrics are composed of
 - (a) fibres that fall within one class set out in the schedule; or
 - (b) fibres that do not fall within one class set out in the schedule, if
 - (i) any particular class set out in the schedule within which fall fibres of which the domestic textile fabric is composed
 - (A) is a class within which fall fibres of which the imported textile fabric is composed, or
 - (B) represents less than five per cent of the weight of the domestic textile fabric, and
 - (ii) the difference between
 - (A) the proportion, expressed as a percentage, that the aggregate weight of the fibres of which the domestic textile fabric is composed that fall within any particular class set out in the schedule is of the weight of the domestic textile fabric, and
 - (B) the proportion, expressed as a percentage, that the aggregate weight of the fibres of which the imported textile fabric is composed that fall within the particular class is of the weight of the imported textile fabric
 - does not exceed 33 percentage points.

PROPORTION OF DUTIES THAT MAY BE GRANTED AS A DRAWBACK

8. Where the amount of duties paid in respect of imported textile fabric that is considered

Sched. CDN. TEXTILE GOODS EXPORTED DRAWBACK REGS.

to be of the same class as domestic textile fabric exceeds the amount of duties that would have been payable had the domestic textile fabric been imported, the proportion of the duties so paid that may be granted as a drawback is the proportion that the amount that would have been so payable is of the amount that was so paid.

REDUCTION IN RESPECT OF A BY-PRODUCT OF MERCHANTABLE SCRAP OR WASTE

- **9.** (1) Where a drawback of duties paid in respect of imported textile fabric is granted and the same quantity of domestic or imported textile fabric of the same class enters into a process of manufacture or production that results in a by-product, the amount of the drawback shall be reduced by the same proportion that the value of the by-product is of the total value of the products that result from the processing of the textile fabric.
- (2) Where a drawback of duties paid in respect of imported textile fabric is granted and the same quantity of domestic or imported textile fabric of the same class enters into a process of manufacture or production that results in merchantable scrap or waste, the amount of the drawback shall be reduced by the amount obtained by applying to the value of the merchantable scrap or waste the lesser of
 - (a) the rate of duties that applies, at the time the merchantable scrap or waste results from the process, to merchantable scrap or waste of the same kind; and
 - (b) the rate of duties paid in respect of the textile fabric.

SCHEDULE

(Section 7)

CLASSES OF FIBRES

- 1. Natural textile fibres such as silk, wool, cotton, flax, sisal
- 2. Artificial fibres being viscose or acetates
- 3. Synthetic fibres being nylons or other polyamides, polyesters, acrylics, polyethylene, polypropylene or elastomers
- 4. Glass. SOR/88-85.

COASTING TRADE (CUSTOMS) REGULATIONS

SOR/87-333

Regulations respecting the Coasting Trade

SHORT TITLE

1. These Regulations may be cited as the Coasting Trade (Customs) Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act;
- "British vessel".—"British vessel" means any vessel registered in the Commonwealth and includes any Canadian vessel;
- "Canadian customs waters".—"Canadian customs waters" means
 - (a) the internal waters of Canada;
 - (b) the territorial sea of Canada; and
 - (c) the waters above the continental shelf as defined in the *Customs and Excise Offshore Application Act* where they are used by a vessel that falls under customs jurisdiction by virtue of that Act:
- "Canadian vessel".—"Canadian vessel" means any vessel registered in Canada;
- "customs office".—"customs office" means a customs office designated pursuant to section 5 of the Act as a vessel clearing station;
- "coasting trade".—"coasting trade" means
 - (a) the transportation of passengers or goods by water, or by land and water, from a place in Canada to another place in Canada or to the same place in Canada, either directly or indirectly by way of a place outside Canada; and
 - (b) the operation for hire or reward of any vessel including commercial fishing vessels within Canadian customs waters except:
 - (i) vessels that are passing through Canadian customs waters in the course of any international voyage without stopping at any place in Canada,
 - (ii) vessels that are employed in international commercial transportation, and
 - (iii) vessels, except seismic vessels conducting surveys, that are engaged in scientific research sponsored by a foreign government and approved by the Canadian government.
- "foreign vessel".—"foreign vessel" means a vessel other than a British vessel;
- "licence". "licence" means a coasting licence issued by the Minister pursuant to these Regulations;
- "suitable".—"suitable" means a vessel that is technically adequate to engage in the coasting trade in an efficient and effective manner and that is offered at a commercially reasonable rate upon such terms and conditions that would not place the applicant for a coating licence at a commercial disadvantage with respect to its competitors;

"vessel".—"vessel" means any conveyance engaged in the coasting trade and includes any water-borne craft so engaged.

GENERAL

- 3. (1) Subject to subsection (2), every master of a vessel engaged in the coasting trade of Canada shall cause a licence issued in respect of the vessel to be on board the vessel at all time.
- (2) Every master of a Canadian vessel which was built in Canada, that is engaged in the coasting trade and for which a licence has not been issued shall, prior to departure from any place in Canada, report to the nearest customs office and submit evidence or information that provides an officer with reasonable grounds to believe that
 - (a) all certificates required under Part VIII of the *Canada Shipping Act* have been issued and the certificates will remain valid until the vessel arrives at its next destination in Canada:
 - (b) all applicable duties, charges and fees owing in respect of the vessel have been paid; and
 - (c) all other requirements of these Regulations have been met.

LICENSING OF VESSELS

- 4. The Minister, on application by an owner or master, or an agent for the owner or master, of any vessel, may issue a licence to engage in the coasting trade if
 - (a) all certificates required under Part VIII of the *Canada Shipping Act* have been issued and the certificates will remain valid until the vessel arrives at its next destination in Canada;
 - (b) all applicable duties, charges and fees owing in respect of the vessel have been paid; and
 - (c) all other requirements of these Regulations have been met.
- 5. (1) A licence may not be issued for any vessel, other than a Canadian vessel, within the area described in subsection 663(3) of the *Canada Shipping Act*, for the transportation of passengers or goods by water, or by land and water, from a place in Canada to another place in Canada or to the same place in Canada, either directly or indirectly by way of a place outside Canada, unless the vessel is in a class of vessels that are described in an order made under section 665 of that Act and a suitable Canadian vessel is not available to engage in the coasting trade in the described area.
- (2) A licence may be issued for a Canadian vessel which was built in Canada, that has been absent from Canada and which returns to Canada to engage in the coasting trade or a Canadian vessel that is duty and tax paid or deemed to be duty and tax paid pursuant to the *Customs and Excise Offshore Application Act* and that has been absent from Canada and which returns to Canada to engage in the coasting trade, if the master of the vessel submits evidence or information that provides an officer with reasonable grounds to believe that the vessel has not been enhanced in value or condition while outside of Canadian customs waters or, where the vessel has been enhanced in value or condition, that the duties owing in respect of any such enhancements are paid.
 - **6.** (1) A licence may be issued for

- (a) a British vessel, other than a Canadian vessel which was built in Canada, that is deemed to be duty and tax paid under the *Customs and Excise Offshore Application Act*;
- (b) a British vessel that is conditionally exempted from duty and tax under that Act if the vessel is being used according to the terms of the conditional exemption;
- (c) subject to subsection (2), a foreign vessel that is deemed to be duty and tax paid under that Act; or
- (d) subject to subsection (2), a foreign vessel that is conditionally exempted from duty and tax under that Act if the vessel is being used according to the terms of the conditional exemption.
- (2) A licence may not be issued for a foreign vessel unless the vessel is in a class of vessels that are described in an order made under section 665 of the *Canada Shipping Act* and a suitable Canadian vessel is not available to engage in the coasting trade in Canadian customs waters.
- **7.** A licence issued for a vessel that is imported temporarily shall set out the nature of the coasting trade to be engaged in by the vessel, the geographical area in which the coasting trade is to be engaged in by the vessel and the term of the licence of the vessel.

TERM OF LICENCE

- **8.** (1) Except as otherwise provided for in this section, the term of a licence shall not exceed one year.
- (2) Subject to subsections (3) and (4), a licence for a Canadian vessel which was built in Canada or for a Canadian vessel that has been duty and tax paid or deemed to be duty and tax paid pursuant to the *Customs and Excise Offshore Application Act* is valid from its effective date until the earliest of the expiry dates of the certificates required under Part VIII of the *Canada Shipping Act*.
- (3) Subject to subsection (4), a licence for a vessel that has been temporarily imported to be engaged in the coasting trade is valid from its effective date until the expiration of the period of the temporary importation or the earliest of the expiry dates of the certificates required under Part VIII of the *Canada Shipping Act*, whichever is earlier.
- (4) A licence expires when the vessel is altered, is enhanced in value or condition or has undergone a change in ownership.
- (5) A licence for a vessel other than a Canadian vessel which was built in Canada or for a vessel other than a Canadian vessel that has been duty and tax paid expires when
 - (a) the vessel has been outside of Canadian customs waters for more than 48 consecutive hours for a purpose other than engaging in the coasting trade of Canada; or
 - (b) an officer has not been notified in advance of a vessel's departure and the vessel has been outside of Canadian customs waters for less than 48 hours for a purpose other than engaging in the coasting trade of Canada.

MODIFICATION, SUSPENSION OR CANCELLATION OF LICENCE

- **9.** (1) The Minister may modify the terms and conditions of a licence issued for a vessel that is imported temporarily.
- (2) The Minister may suspend or cancel a licence if the licensee no longer satisfies any condition attaching to the licence.

- (3) The Minister may cancel a licence where
- (a) the licensee has made a misrepresentation in the application for a licence; or
- (b) the licensee requests in writing that the Minister cancel the licence.

REINSTATEMENT AND RENEWAL OF LICENCE

- 10. Where the Minister has reason to believe that the cause for the suspension of a licence or the cancellation of a licence no longer exists, the Minister may reinstate a suspended or a cancelled licence.
- 11. (1) Subject to subsections (2) and (3), a licence for a vessel may be renewed for a term commencing on the day following the day on which the licence expires if the requirements set out in sections 4 to 6 are met.
- (2) A licence for a Canadian vessel which was built in Canada or a Canadian vessel that has been duty and tax paid or deemed to be duty and tax paid pursuant to the *Customs and Excise Offshore Application Act* may be renewed for a term commencing on the day following the day on which the licence expires and, subject to subsection 8(4), ending on the earliest of the expiry dates of the certificates required under Part VIII of the *Canada Shipping Act*.
- (3) A licence for a vessel that has been temporarily imported to be engaged in the coasting trade of Canada may be renewed for a term commencing on the day following the day on which the licence expires and, subject to subsections 8(4) and (5), ending on the earliest of the expiry dates of the certificates required under Part VIII of the *Canada Shipping Act* or the expiration of the period of temporary importation, whichever is earlier.

RELEASE OF VESSEL WITHOUT REQUIREMENT OF ACCOUNTING

12. Where a vessel has been outside of Canadian customs waters for less than 30 days and has not been enhanced in value or condition while abroad, that vessel, if not charged with duties, may be released without any requirement of accounting pursuant to section 32 of the Act.

CUSTOMS BONDED WAREHOUSES REGULATIONS

SOR/86-1063, as am. SOR/91-274.

Regulations respecting Customs Bonded Warehouses

SHORT TITLE

1. These Regulations may be cited as the Customs Bonded Warehouses Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act;
- "applicant".—"applicant" means a person who applies for a licence;
- "chief officer of customs".—"chief officer of customs", with respect to a bonded warehouse or a proposed bonded warehouse, means the manager of the customs office or customs offices that serve the area in which the bonded warehouse is located or is proposed to be located;
- "Department".—"Department" means that part of the Department of National Revenue for which the Deputy Minister is the lawful deputy of the Minister;
- "excise bonding warehouse".—"excise bonding warehouse" means a bonding warehouse within the meaning of the *Excise Act*;
- "intoxicating liquor".—"intoxicating liquor" has the same meaning as in the Importation of Intoxicating Liquors Act;
- "licence".—"licence" means a licence to operate a place as a bonded warehouse;
- "licensee".—"licensee" means a person to whom a licence has been issued.

PART I—LICENSING OF BONDED WAREHOUSES

ISSUANCE OF LICENCE

- **3.** (1) Subject to subsection (4), the Minister may, where he deems it necessary or desirable to do so, issue a licence to any person who makes an application therefor in accordance with subsection (2) and who gives such security as may be required under section 4 and pays any fee required to be paid under section 5.
- (2) Any person who wishes to apply for a licence in respect of a proposed bonded warehouse shall submit a completed application therefor in the prescribed form, together with a detailed plan of the proposed bonded warehouse, to the chief officer of customs.
 - (3) The plan referred to in subsection (2) shall indicate
 - (a) whether the place proposed to be operated as a bonded warehouse exists or is to be constructed;
 - (b) the type of construction; and
 - (c) the area within the place proposed to be operated as a bonded warehouse that is to be used for the storage of goods.

- (4) The Minister shall not issue a licence to an applicant unless he is satisfied that
- (a) the applicant is of good character;
- (b) the applicant is in compliance with every by-law, regulation, ordinance or other law that governs occupational health and safety, zoning or the repair, construction or maintenance of buildings or other structures used primarily as warehouses;
- (c) the site of the proposed warehouse is within an area served by a customs office;
- (d) the applicant has sufficient financial resources to enable him to provide the facilities, equipment, services and personnel required under sections 11 and 12 and to lease or purchase the place proposed to be operated as a bonded warehouse;
- (e) the proposed bonded warehouse will provide conditions suitable for the safekeeping of goods; and
- (f) the Department is able to provide customs services with respect to the proposed bonded warehouse.
- (5) Subsection (2) does not apply to a person operating a bonded warehouse on the day that sections 24, 30, 37, 164 and 166 of the Act come into force.

SECURITY

- **4.** (1) An applicant shall, before a licence is issued to him, give security in an amount that is estimated by the chief officer of customs to be the maximum amount of taxes and duties that would be payable at any time in the year following the issuance of the licence in respect of the goods stored in the bonded warehouse in that year, but in no case shall the amount of security be less than \$10,000.
- (2) The Minister may at any time require a licensee to increase the amount of security given under subsection (1) to an amount sufficient to ensure the payment of the taxes and duties payable in respect of the goods stored in the bonded warehouse.
 - (3) The security deposited under subsection (1) shall be in the form of
 - (a) cash;
 - (b) a certified cheque:
 - (c) a transferable bond issued by the Government of Canada; or
 - (d) a bond issued by
 - (i) a company that is registered and holds a certificate of registry to carry on the fidelity or surety class of insurance business and that is approved by the President of the Treasury Board as a company whose bonds may be accepted by the Government of Canada.
 - (ii) a member of the Canadian Payments Association referred to in section 4 of the Canadian Payments Association Act,
 - (iii) a corporation that accepts deposits insured by the Canada Deposit Insurance Corporation or the $R\acute{e}gie\ de\ l'$ assurance- $d\acute{e}p\^{o}ts\ du\ Qu\acute{e}bec$ to the maximum permitted by the statutes under which those institutions were established,
 - (iv) a credit union as defined in paragraph 137(6)(b) of the Income Tax Act, or
 - (v) a corporation that accepts deposits from the public, if repayment of the deposits is guaranteed by Her Majesty in right of a province. SOR/91-274.

LICENCE FEES

- **5.** (1) Subject to subsections (3) to (6), every licensee shall pay to the chief officer of customs a fee for his licence, determined in the manner described in subsection (2).
- (2) Subject to subsection (4), a licensee shall pay, for the period beginning on the day on which the licence is issued and ending on March 31 in the same fiscal year and for each fiscal year of operation thereafter, a fee determined on the basis of the amount of security deposited under section 4, in accordance with the following table:

TABLE

Amount of Security Deposited	Amount of Fee Payable Per Fiscal Year
\$10,000	\$100
10,001 to \$50,000	\$800
50,001 to \$200,000	\$1,500
200,001 to \$500,000	\$3,000
More than \$500,000	\$5,000

- (3) The fee payable under subsection (2) for the period beginning on the day on which the licence is issued and ending on March 31 in the same fiscal year shall be paid on or before the issuance of the licence and the fee for each fiscal year of operation thereafter shall be paid on or before April 1 of that fiscal year of operation.
- (4) Where a licence is issued on or after October 1 of a fiscal year, the fee payable for that fiscal year shall be half the applicable fee.
- (5) No fee is payable in respect of a bonded warehouse if the bonded warehouse is located on the same premises as an excise bonding warehouse and the staff in that excise bonding warehouse provide both excise and customs services.
- (6) Any licensee who has paid a fee in respect of a bonded warehouse for the fiscal year during which section 30, subsection 37(1) and paragraphs 164(1)(i) and (j) of the Act came into force shall not be required to pay an annual fee for that fiscal year pursuant to this section.
- (7) For the purposes of this section, "fiscal year" means the period beginning on April 1 and ending on March 31 in the year next following.

AMENDMENT OF LICENCE

- **6.** (1) The Minister may amend a licence only for the following purposes:
- (a) subject to subsection (2),
 - (i) to change a restriction specified in the licence as to the classes of goods that may be received in the bonded warehouse, or to specify such a restriction,
 - (ii) to change the circumstances specified in the licence in which goods may be received in the bonded warehouse, or to specify such circumstances; or
- (b) to change the name of the licensee, where the name of the licensee is changed.
- (2) The Minister may amend a licence for the purposes set out in subparagraph (1)(a)(i) or (ii) only where he gives to the licensee 90 days notice of the proposed amendment.

CANCELLATION OR SUSPENSION OF LICENCES

- 7. The Minister may cancel a licence where the licensee
- (a) no longer owns or leases the place that is licensed as a bonded warehouse;
- (b) requests the Minister in writing to cancel the licence; or
- (c) is bankrupt.
- 8.(1) The Minister may suspend or, subject to section 9, cancel a licence where the licensee
 - (a) is the subject of a receivership in respect of his debts;
 - (b) fails to comply with any Act of Parliament, or any regulation made pursuant thereto, that prohibits, controls or regulates the importation or exportation of goods;
 - (c) has not acted in compliance with every by-law, regulation, ordinance or other law that governs occupational health and safety, zoning or the repair, construction or maintenance of buildings or other structures used primarily as warehouses;
 - (d) has, in the course of his operation of the bonded warehouse, acted dishonestly in his business dealings with customs brokers, importers, carriers, Her Majesty or servants of Her Majesty; or
 - (e) has been incompetent in the operation of the bonded warehouse.
 - (2) Subject to section 9, the Minister may cancel a licence where, in his opinion,
 - (a) the volume of goods being received in the bonded warehouse is no longer sufficient to warrant the continued operation of the bonded warehouse;
 - (b) there is no longer a need for a bonded warehouse in the area in which the bonded warehouse is located; or
 - (c) the Department is no longer able to provide customs services with respect to the bonded warehouse.
- (3) Where a licence is suspended, an officer may lock and seal the bonded warehouse and keep it locked and sealed during the period of suspension.
 - 9. The Minister shall, before cancelling a licence, give to the licensee
 - (a) 90 days notice of the proposed cancellation;
 - (b) adequate information concerning any allegations with respect to any of the grounds described in paragraphs 8(1)(a) to (e) on which the Minister proposes to cancel the licence; and
 - (c) a reasonable opportunity to respond and make representations as to why the licence should not be cancelled.

REINSTATEMENT OF LICENCES

10. The Minister may reinstate a suspended licence where the Minister is satisfied that the cause for the suspension no longer exists.

PART II—OPERATION OF BONDED WAREHOUSES

FACILITIES, EQUIPMENT, PERSONNEL AND STANDARDS

- 11. (1) Every licensee shall provide at the bonded warehouse in respect of which the license was issued
 - (a) adequate space for the examination of goods by officers; and
 - (b) the personnel and equipment necessary to ensure that the goods to be examined by an officer are made available to the officer for examination.
- (2) Where a bonded warehouse forms only part of a building, the licensee shall, if so requested by the chief officer of customs, keep the bonded warehouse separate from the remainder of the building by a partition or other suitable structure.
 - 12. Every licensee shall take reasonable measures to ensure that
 - (a) the goods received in the bonded warehouse are stored safely and securely and are marked in such a manner that the goods are readily identifiable and so as to enable an officer to check the goods against the relevant customs accounting documents; and
 - (b) the bonded warehouse may be locked and sealed by an officer where the chief officer of customs requests that the bonded warehouse be locked and sealed, for the purpose of verifying the goods received in the bonded warehouse or the warehouse accounting documents.
- 13. No intoxicating liquor shall be received in or transferred from a bonded warehouse in a province unless the licensee has obtained written approval to receive or transfer the intoxicating liquor from the board, commission or agency authorized by the laws of that province to sell or authorize the sale of intoxicating liquor in that province.

RECEIPT OF GOODS

14. Every licensee shall

- (a) acknowledge the receipt of imported goods that have been received in the bonded warehouse in respect of which the licence was issued and that have not been released by
 - (i) endorsing the bill of lading, way-bill or other similar transportation document presented to him by the carrier, or
 - (ii) issuing a transfer document to the carrier; and
- (b) acknowledge the receipt of any other goods that have been received in the bonded warehouse by completing the delivery document in the prescribed manner.

TIME LIMITS

- 15. (1) Where goods in a bonded warehouse have not been removed therefrom within the time limit prescribed in the schedule for those goods, the goods may be deposited in a place of safekeeping as provided for in subsection 37(1) of the Act.
- (2) The period of the time limit prescribed in column II of an item of the schedule in respect of goods described in column I of that item shall commence on the day on which the goods are accounted for under paragraph 32(1)(a) or subsection 32(3) of the Act.

RECORD KEEPING

- 16. (1) Every licensee shall keep detailed records of all goods received in the bonded warehouse in respect of which his licence was issued and of all goods removed from the bonded warehouse, including records of inventory and records of the transactions that occur while the goods are in the bonded warehouse, including records of
 - (a) the receipt of the goods and the accounting thereof into the bonded warehouse;
 - (b) the removal of the goods from and the accounting thereof out of the bonded warehouse;
 - (c) any transfer of ownership in respect of the goods;
 - (d) any transfer of the goods to another bonded warehouse; and
 - (e) any unpacking, packing, manipulation or alteration of the goods or any combination of the goods with other goods.
- (2) The records referred to in subsection (1) shall be kept for a period beginning on the day on which the records are made and ending six years after the day on which the goods are removed from the bonded warehouse.

ALTERING GOODS

- 17. (1) Goods shall not be manipulated, altered or combined with other goods while in a bonded warehouse except for the purpose of or in the course of
 - (a) normal maintenance and servicing;
 - (b) complying with any applicable law of Canada or of a province; or
 - (c) separating defective goods from prime quality goods.
 - (2) Goods may at any time be unpacked or packed while in a bonded warehouse.
- (3) Where the importer or owner of goods stored in a bonded warehouse desires that the goods be removed therefrom in smaller units than those recorded at the time of warehousing, the importer or owner shall submit to the chief officer of customs an amended accounting for such goods in the prescribed form.

TRANSFER OF OWNERSHIP OF GOODS

- 18. (1) Subject to subsections (2) and (3), where there is a transfer of ownership of goods stored in a bonded warehouse, the importer or owner of the goods shall submit a transfer document in the prescribed form to an officer at the customs office where the goods were accounted for under paragraph 32(1)(a) or subsection 32(3) of the Act.
- (2) Where goods stored in a bonded warehouse are in packages, only the ownership of whole packages may be transferred.
- (3) The ownership of goods in a bonded warehouse shall not be transferred more than three times while the goods are in a bonded warehouse.

CUSTOMS BROKERS LICENSING REGULATIONS

SOR/86-1067, as am. SOR/90-121; SOR/91-274; SOR/92-186.

Regulations respecting the Licensing of Customs Brokers

SHORT TITLE

1. These Regulations may be cited as the Customs Brokers Licensing Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act;
- "chief officer of customs".—"chief officer of customs", with respect to a customs broker, means the manager of a local customs office or customs offices that serve the area in which the broker transacts business, or proposes to transact business, as a customs broker;
- "licence".—"licence" means a licence to transact business as a customs broker issued pursuant to section 9 of the Act.

PRESCRIBED QUALIFICATIONS FOR CUSTOMS BROKERS

- 3. (1) An individual is qualified under these Regulations if the individual
- (a) is a citizen or permanent resident of Canada;
- (b) is of good character;
- (c) is at least eighteen years of age;
- (d) has sufficient financial resources to conduct his business in a responsible manner; and
- (e) has a sufficient knowledge of the laws and procedures relating to importations and exportations determined in accordance with section 4.
- (2) A partnership is qualified under these Regulations if the partnership
- (a) in the case of a partnership composed of individuals,
 - (i) is composed of individuals each of whom meets the qualifications prescribed in paragraphs (1)(a) to (c),
 - (ii) has sufficient financial resources to conduct its business in a responsible manner, and
 - (iii) has at least one partner who has a sufficient knowledge of the laws and procedures relating to importations and exportations, determined in accordance with section 4; and
- (b) in the case of a partnership composed of corporations,
 - (i) is composed of corporations each of which meets the qualifications prescribed in paragraphs (3)(a) to (c),
 - (ii) has sufficient financial resources to conduct its business in a responsible manner, and
 - (iii) has at least one partner that meets the qualification prescribed in paragraph (3)(d).

- (3) A corporation is qualified under these Regulations if
- (a) the corporation
 - (i) is incorporated in Canada,
 - (ii) is of good reputation, and
 - (iii) has sufficient financial resources to conduct its business in a responsible manner;
- (b) all of the directors of the corporation are of good character;
- (c) a majority of the directors of the corporation are citizens or permanent residents of Canada; and
- (d) at least one officer of the corporation has a sufficient knowledge of the laws and procedures relating to importations and exportations, determined in accordance with section 4.
- **4.** (1) Subject to subsection (2), a sufficient knowledge of the laws and procedures relating to importations and exportations is established, for the purposes of paragraph 3(1)(e), subparagraphs 3(2)(a)(iii) and (b)(iii) and paragraphs 3(3)(d) if the individual, partner or officer has
 - (a) first attained a grade of at least 60 per cent on the Customs Brokers Qualifying Examination given pursuant to section 15; and
 - (b) attained a grade of at least 60 per cent on the Customs Brokers Professional Examination given pursuant to section 15, if
 - (i) the examination was written not more than six months before the date of the application for a licence, or
 - (ii) where the examination was written more than six months before the date of the application for a licence, the individual, partner or officer transacted business as a customs broker, whether on his own behalf or on behalf of a licensee, from within six months after the date on which the examination was written until not more than six months before the date of the application for a licence.
- (2) For the purposes of paragraph 3(1)(e), subparagraphs 3(2)(a)(iii) and (b)(iii) and paragraph 3(3)(d), a sufficient knowledge of the laws and procedures relating to importations and exportations is established, if the individual, partner or officer
 - (a) prior to the coming into force of these Regulations, met the requirement under the *Custom-House Brokers Licensing Regulations* of having a sufficient knowledge of the law relating to customs matters to discharge the obligations of a customs broker; and
 - (b) transacted business as a customs broker, whether on his own behalf or on behalf of a person to whom a licence was issued under subsection 118(1) of the former *Customs Act*, being chapter C-40 of the Revised Statutes of Canada, 1970, until not more than six months before the date of the application for a licence.

PRESCRIBED QUALIFICATIONS FOR PERSONS TRANSACTING BUSINESS AS CUSTOMS BROKERS ON BEHALF OF PERSONS SO LICENSED

- **5.** (1) An individual who is not a licensed customs broker who transacts business as a customs broker on behalf of an individual who is a licensed customs broker must be an employee of the licensed customs broker and
 - (a) meet the qualifications prescribed in paragraphs 3(1)(a) to (c); and

- (b) have a sufficient knowledge of the laws and procedures relating to importations and exportations, determined in accordance with section 6.
- (2) An individual who is not a licensed customs broker who transacts business as a customs broker on behalf of a partnership composed of individuals that is a licensed customs broker must be
 - (a) a partner of the partnership and
 - (i) meet the qualifications prescribed in paragraphs 3(1)(a) to (c), and
 - (ii) have a sufficient knowledge of the laws and procedures relating to importations and exportations, determined in accordance with section 4; or
 - (b) a partner or an employee of the partnership and
 - (i) meet the qualifications prescribed in paragraphs 3(1)(a) to (c), and
 - (ii) have sufficient knowledge of the laws and procedures relating to importations and exportations determined in accordance with section 6.
- (3) An individual who is not a licensed customs broker who transacts business as a customs broker on behalf of a partnership composed of corporations must be
 - (a) an officer of one of the partners and
 - (i) meet the qualifications prescribed in paragraphs 3(1)(a) to (c), and
 - (ii) have sufficient knowledge of the laws and procedures relating to importations and exportations determined in accordance with section 4; or
 - (b) an employee of one of the partners or of the partnership and
 - (i) meet the qualifications prescribed in paragraphs 3(1)(a) to (c), and
 - (ii) have sufficient knowledge of the laws and procedures relating to importations and exportations, determined in accordance with section 6.
- (4) An individual who is not a licensed customs broker who transacts business as a customs broker on behalf of a corporation that is a licensed customs broker must be
 - (a) an officer of the corporation and
 - (i) meet the qualifications prescribed in paragraphs 3(1)(a) to (c), and
 - (ii) have a sufficient knowledge of the laws and procedures relating to importations and exportations, determined in accordance with section 4; or
 - (b) an employee of the corporation and
 - (i) meet the qualifications prescribed in paragraphs 3(1)(a) to (c), and
 - (ii) have a sufficient knowledge of the laws and procedures relating to importations and exportations determined in accordance with section 6.
- **6.** For the purposes of paragraphs 5(1)(b), (2)(b), (3)(b) and (4)(b), an individual has a sufficient knowledge of the laws and procedures relating to importations and exportations if the person
 - (a) attained a grade of at least 60 per cent on the Customs Brokers Qualifying Examination given pursuant to section 15;
 - (b) meets the knowledge requirement determined in accordance with subsection 4(2); or
 - (c) establishes that
 - (i) prior to the coming into force of these Regulations, he had successfully completed

the Customs Brokers Employee Qualifying Course given by the Canadian Institute of Customs House Brokers, and

(ii) he has been continuously employed since completing the Course referred to in subparagraph (i) in the transaction of business as a customs broker on behalf of a person to whom a licence was issued under subsection 118(1) of the former *Customs Act*, being chapter C-40 of the Revised Statutes of Canada, 1970.

APPLICATION FOR LICENCE OR RENEWAL

- 7. An application for a licence must be made in the prescribed form and be submitted in duplicate to the chief officer of customs for the area in which the applicant proposes to transact business as a customs broker.
- **8.** (1) On receipt of an application for a licence and before a licence is issued, the chief officer of customs to whom the application is made shall display, for a period of two weeks in the customs office managed by him, a public notice of the application, setting out
 - (a) where the applicant is an individual, the applicant's full name and address and the business name to be used:
 - (b) where the applicant is a partnership composed of individuals,
 - (i) the full name and address of each partner,
 - (ii) the name of each partner who meets the knowledge requirement determined in accordance with section 4, and
 - (iii) the business name to be used;
 - (c) where the applicant is a partnership composed of corporations
 - (i) the legal name of each partner,
 - (ii) the head office address of each partner.
 - (iii) the name and address of each officer and director of each partner,
 - (iv) the names of the officers and directors of each partner who meet the knowledge requirement determined in accordance with section 4, and
 - (v) the business name to be used;
 - (d) where the applicant is a corporation,
 - (i) the legal name of the corporation,
 - (ii) the head office address of the corporation,
 - (iii) the name and address of each officer or director.
 - (iv) the name of each officer or director who meets the knowledge requirement determined in accordance with section 4, and
 - (v) the business name to be used if other than the legal name of the corporation;
 - (e) the name of the individual who will manage each business office;
 - (f) the name of each individual who will transact business on a full-time basis as a customs broker at a business office maintained in the area served by that customs office and meets the knowledge requirement determined in accordance with section 6;
 - (g) in respect of each individual referred to in paragraph (f), the business office of the applicant at which the individual will transact business.

- (2) The notice referred to in subsection (1) shall invite written comments or information from the public regarding the application.
- **9.** An application for the renewal of a licence must be made in the prescribed form, and must be submitted in duplicate to the chief officer of customs at the customs office located at the place specified in the licence not later than the 15th day of February preceding the day on which the licence will expire.

SECURITY

- 10. (1) Before a licence is issued or renewed, the customs broker shall, in respect of the licence to be issued or renewed, deposit security with the chief officer of customs in the amount of \$50,000 to protect the Department of National Revenue for Customs and Excise against loss while the licence or renewal thereof is in effect.
 - (2) The security deposited under subsection (1) shall be in the form of
 - (a) cash;
 - (b) a certified cheque;
 - (c) a transferable bond issued by the Government of Canada; or
 - (d) a bond issued by
 - (i) a company that is registered and holds a certificate of registry to carry on the fidelity or surety class of insurance business and that is approved by the President of the Treasury Board as a company whose bonds may be accepted by the Government of Canada.
 - (ii) a member of the Canadian Payments Association referred to in section 4 of the Canadian Payments Association Act,
 - (iii) a corporation that accepts deposits insured by the Canada Deposit Insurance Corporation or the *Régie de l'assurance-dépôts du Québec* to the maximum permitted by the statutes under which those institutions were established,
 - (iv) a credit union as defined in paragraph 137(6)(b) of the *Income Tax Act*, or
 - (v) a corporation that accepts deposits from the public, if repayment of the deposits is guaranteed by Her Majesty in right of a province. SOR/90-121; SOR/91-274.

FEES

- 11. (1) A fee of \$600 must be paid before a licence is issued.
- (2) A renewal fee of \$600 must be paid before a licence is renewed.
- (3) A renewal fee must be refunded if, prior to the 15th day of February preceding the day on which the licence will expire, the customs broker withdraws the application for renewal by notice in writing to the chief officer of customs. SOR/92-186.

DURATION

12. A licence, including a licence that has been renewed, expires on the 31st day of March next following the date on which the licence or its renewal is expressed to be effective.

TERMS AND CONDITIONS

- 13. (1) Subject to subsection (2), a licence authorizes the holder to transact business as a customs broker
 - (a) at the customs office specified in the licence, if the holder maintains at least one business office in the area served by that customs office;
 - (b) at any customs office located at a place set out in the schedule; and
 - (c) at any other customs office, through a qualified customs broker whose licence specifies that customs office, if the business originates within the area referred to in paragraph (a).
- (2) A licence only authorizes the transaction of business as a customs broker at a business office referred to in paragraph (1)(a) if at least one individual who transacts business on a full-time basis as a customs broker at the business office meets the knowledge requirement determined in accordance with section 4, if the individual transacts business on his own behalf, or in accordance with section 6, if the individual transacts business on behalf of another person.

TRANSACTION OF BUSINESS AS A CUSTOMS BROKER

- 14. Every customs broker shall
- (a) display prominently at each business office at which he transacts business as a customs broker
 - (i) where the customs broker is a partnership or a corporation, a sign bearing the name under which the partnership or corporation is authorized to transact business as a customs broker, and
 - (ii) the licence or a copy thereof;
- (b) immediately notify in writing the chief officer of customs of any change
 - (i) in the address of a business office at which he transacts business as a customs broker.
 - (ii) in the legal or business name of the partnership or the corporation, where the customs broker is a partnership or a corporation,
 - (iii) in the membership of the partnership, where the customs broker is a partnership,
 - (iv) in the officers or directors of the corporation, where the customs broker is a corporation,
 - (v) of a manager of a business office,
 - (vi) in the ownership of the business or corporation, where the customs broker is an individual or corporation, and
 - (vii) in the individuals meeting the knowledge requirement determined in accordance with section 4 who are employed on a full-time basis by the holder of the licence;
- (c) furnish to the importer or exporter in respect of each transaction made on his behalf a copy of the customs accounting documents pertaining thereto, bearing the customs accounting number and official customs stamp; and
- (d) promptly account to a client importer or exporter for funds received
 - (i) for the client from the Receiver General for Canada, and

(ii) from the client in excess of the duties or other charges payable in respect of the client's business with the Department of National Revenue for Customs Excise.

EXAMINATIONS

- **15.** (1) The Customs Brokers Professional Examination and the Customs Brokers Qualifying Examination shall be given at least twice a year at such times as the Minister or a person designated by him for the purposes of section 9 of the Act directs.
- (2) Notice of the time and place of an examination shall be posted in the office of the chief officer of customs and shall be mailed to all individuals who have expressed an interest in taking the examination, not less than 60 days prior to the date set for the examination.
 - 16. Every individual proposing to write an examination must
 - (a) file an application therefor in the prescribed form with the chief officer of customs at the nearest customs office at least 30 days prior to the date set for the examination; and
 - (b) at the time the application is made, pay a fee of
 - (i) \$100, in the case of the Customs Brokers Professional Examination, or
 - (ii) \$25, in the case of the Customs Brokers Qualifying Examination.

RECORDS

17. (1) Every customs broker shall keep

- (a) records and books of account indicating all financial transactions made while transacting business as a customs broker;
- (b) a copy of each customs accounting document made while transacting business as a customs broker and copies of all supporting documents;
- (c) copies of all correspondence, bills, accounts, statements and other papers received or prepared by him that relate to the transaction of business as a customs broker; and
- (d) separately, all of the records, books of account and copies of transactions referred to in paragraphs (a) to (c) relating to business transacted pursuant to paragraph 13(1)(c).
- (2) Every customs broker shall retain the records, books of account and copies mentioned in paragraphs (1)(a) to (d) for a period of six years from the end of the calendar year
 - (a) in respect of which the records and books of account are kept;
 - (b) in which the customs accounting document is made; or
 - (c) in which the correspondence, bills, accounts, statements or other papers were received or prepared by the customs broker.

CANCELLATION OR SUSPENSION

- 18. (1) The Minister or a person designated by the Minister for the purposes of section 9 of the Act may suspend or cancel the licence of a customs broker if the customs broker
 - (a) contravened the provisions of an Act of Parliament or a regulation made thereunder relating to the importation or exportation of goods;
 - (b) acted to defraud Her Majesty or a client;
 - (c) suggested a plan for the evasion of any duties zr other debts due to Her Majesty in right

- of Canada that involves the contravention of the provisions of an Act of Parliament or a regulation made thereunder;
- (d) failed to comply with these Regulations;
- (e) become insolvent or bankrupt;
- (f) engaged in any dishonest conduct while transacting business as a customs broker;
- (g) ceased to carry on business as a customs broker or failed to carry out his duties and responsibilities as a customs broker in a competent manner; or
- (h) is no longer qualified under these Regulations.
- (2) Before a licence is cancelled or suspended the Minister or a person designated by him for the purposes of section 9 of the Act shall cause to be given to the customs broker
 - (a) 30 days notice of the proposed cancellation or suspension;
 - (b) reasonable information concerning any allegation with respect to any of the grounds referred to in paragraphs (1)(a) to (h) on which the Minister proposes to cancel or suspend the licence; and
 - (c) a reasonable opportunity to respond and make representations as to why the licence should not be cancelled or suspended. SOR/90-121.

SURRENDER OF LICENCE

- 19. Every customs broker shall forthwith surrender his licence to the chief officer of customs at the customs office specified in the licence if
 - (a) the licence has been cancelled; or
 - (b) the customs broker has ceased to transact business as a customs broker.

SCHEDULE

(Subsection 13(1)(b))

Province of Newfoundland

Argentia

Botwood

Burin

Fortune

Gander

Goose Bay Airport

Grand Falls

Harbour Grace

Port-aux-Basques

Province of Nova Scotia

Amherst

Antigonish

Baddeck

Bridgewater

Digby

SOR/86-1067 Sched.

Liverpool

Lunenburg

Middleton

New Glasgow

Shelburne Windsor

Province of Prince Edward Island

Charlottetown

Summerside

Province of New Brunswick

Andover

Campbellton

Campobello

Caraquet

Centreville

Clair

Grand Falls

Grand Manan

McAdam

Newcastle

St. Andrews

St. Leonard

Sussex

Province of Quebec

Cap-aux Meules

Daaquam

Dundee

East Hereford

Farnham

Frelighsburg

Gaspé

Hemmingford

Lac Mégantic

La Tuque

Montmagny

Noyan

Paspébiac

Pohénégamook

Rimouski

Rivière-du-Loup

Sutton

Province of Ontario

Carleton Place

Cochrane

Goderich

Kenora

Sched.

CUSTOMS BROKERS LICENSING REGULATIONS

Little Current

Nanticoke

Parry Sound

Pembroke

Port Colborne

Port Hope

Port Lambton

Southampton

Tillsonburg

Province of Manitoba

Coulter

Crystal City

Gretna

Province of Saskatchewan

North Battleford

Weyburn

Yorkton

Province of British Columbia

Boundary Bay

Cascade

Courtenay

Kitimat

Nelson

CUSTOMS SUFFERANCE WAREHOUSES REGULATIONS

SOR/86-1065, as am. SOR/88-85; SOR/91-274; SOR/92-187.

Regulations respecting Customs Sufferance Warehouses

SHORT TITLE

1. These Regulations may be cited as the Customs Sufferance Warehouses Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act;
- "applicant".— "applicant" means a person who applies for a licence;
- "carrier".—"carrier" means a person who, pursuant to the *Transportation of Goods Regulations*, is authorized to transport goods or to cause goods to be transported;
- "chief officer of customs".—"chief officer of customs", with respect to a sufferance warehouse or a proposed sufferance warehouse, means the manager of the customs office or customs offices that serve the area in which the sufferance warehouse is located or is proposed to be located;
- "Department".—"Department" means that part of the Department of National Revenue for which the Deputy Minister of National Revenue for Customs and Excise is the lawful deputy of the Minister;
- "licence".—"licence" means a licence to operate a place as a sufferance warehouse;
- "licensee".—"licensee" means a person to whom a licence has been issued.

PART I—LICENSING OF SUFFERANCE WAREHOUSES

ISSUANCE OF LICENCE

- **3.** (1) Subject to subsection (3), the Minister may, where he deems it necessary or desirable to do so, issue a licence to any person who makes an application therefor in accordance with subsection (2) and gives such security as may be required under section 4 and pays the fees required under paragraph 5(1)(a).
- (2) Any person who wishes to apply for a licence, shall submit a completed application therefor in the prescribed form, together with a detailed plan of the proposed sufferance warehouse, to the chief officer of customs.
 - (3) The Minister shall not issue a licence to an applicant unless he is satisfied that
 - (a) the applicant is of good character;
 - (b) the applicant is acting in compliance with every by-law, regulation, ordinance or other law that governs occupational health and safety, zoning or the repair, construction or maintenance of buildings or other structures used primarily as warehouses;
 - (c) the applicant has sufficient financial resources to enable him to provide the facilities, equipment, personnel and services required under sections 11 to 13 and to lease or purchase the proposed sufferance warehouse;

- (d) the volume and nature of business in the area in which the applicant proposes to operate a sufferance warehouse is such that a sufferance warehouse is needed to serve the importers in that area;
 - (e) the site of the proposed sufferance warehouse is within a reasonable distance from major transportation routes and a customs office;
 - (f) the proposed sufferance warehouse contains adequate space for the storage of imported goods;
 - (g) the structure of the proposed sufferance warehouse will be suitable for the operation of a sufferance warehouse; and
 - (h) the Department is able to provide customs services with respect to the proposed sufferance warehouse.
- (4) The Minister may issue a licence to a person who was operating a sufferance warehouse on the day that sections 24, 30, 37, 164 and 166 of the Act came into force, where that person meets the requirements of subsection (3) and gives or has given such security as may be required under section 4 and pays or has paid the fee required to be paid under section 5.

SECURITY

- **4.** (1) An applicant shall, before a licence is issued to him, give security in an amount that is determined by the Minister, but in no case shall the amount thereof be less than
 - (a) \$5,000, in respect of a proposed sufferance warehouse that would be restricted by the terms and conditions of its licence to the receipt of fruit and vegetables;
 - (b) \$10,000, in respect of a proposed sufferance warehouse that would be a private railway siding and that is restricted by the terms and conditions of its licence to the receipt of goods transported by carload and consigned to the licensee; and
 - (c) \$20,000, in respect of any other proposed sufferance warehouse.
- (2) The Minister may at any time require a licensee to increase the amount of security given under subsection (1) to an amount sufficient to ensure the payment of any duties payable in respect of goods stored in the sufferance warehouse.
 - (3) The security deposited under subsection (1) shall be in the form of
 - (a) cash;
 - (b) a certified cheque;
 - (c) a transferable bond issued by the Government of Canada; or
 - (d) a bond issued by
 - (i) a company that is registered and holds a certificate of registry to carry on the fidelity or surety class of insurance business and that is approved by the President of the Treasury Board as a company whose bonds may be accepted by the Government of Canada,
 - (ii) a member of the Canadian Payments Association referred to in section 4 of the Canadian Payments Association Act,
 - (iii) a corporation that accepts deposits insured by the Canada Deposit Insurance Corporation or the *Régie de l'assurance-dépôts du Québec* to the maximum permitted by the statutes under which those institutions were established,

- (iv) a credit union as defined in paragraph 137(6)(b) of the *Income Tax Act*, or
- (v) a corporation that accepts deposits from the public, if repayment of the deposits is guaranteed by Her Majesty in right of a province. SOR/91-274.

LICENCE FEES

- **5.** (1) Every licensee shall pay to the chief officer of customs the following fees in respect of his licence:
 - (a) in the case of a licence other than a licence granted to a person referred to in subsection 3(4), \$500 for the period beginning on the day on which the licence is issued and ending on March 31 in the same fiscal year; and
 - (b) in the case of all licences, \$500 for each fiscal year of operation after the period referred to in paragraph (a) that begins during the term of the licence.
- (2) The fee for the period referred to in paragraph (1)(a) shall be paid on or before the day on which the licence is issued and the fee for each fiscal year referred to in paragraph (1)(b) shall be paid on or before April 1 of that fiscal year.
- (3) For the purposes of this section, "fiscal year" means the period beginning on April 1 and ending on the 31st day of March next following. SOR/92-187.

AMENDMENT OF LICENCE

- **6.** (1) The Minister may amend a licence only for the following purposes:
- (a) subject to subsection (2),
 - (i) to change a restriction specified in the licence regarding the classes of goods that maybe received in the sufferance warehouse in respect of which the licence was issued, or to specify such a restriction, and
 - (ii) to change the circumstances specified in the licence in which goods may be received in the sufferance warehouse, or to specify such circumstances; or
- (b) to change the name of the licensee, where the name of the licensee is changed.
- (2) The Minister may amend a licence for the purposes set out in subparagraph (1)(a)(i) or (ii) only where he gives to the licensee 90 days notice of the proposed amendment.

CANCELLATION OR SUSPENSION OF LICENCE

- 7. The Minister may cancel a licence where the licensee
- (a) no longer owns or leases the place that is licensed as a sufferance warehouse;
- (b) requests the Minister in writing to cancel the licence; or
- (c) is bankrupt.
- **8.** (1) The Minister may suspend or, subject to section 9, cancel a licence where the licensee
 - (a) is the subject of a receivership in respect of his debts;
 - (b) fails to comply with any Act of Parliament, or any regulation made pursuant thereto, that prohibits, controls or regulates the importation or exportation of goods;
 - (c) has not acted in compliance with every by-law, regulation, ordinance or other law that

governs occupational health and safety, zoning or the repair, construction or maintenance of buildings or other structures used primarily as warehouses;

- (d) has, in the course of his operation of the sufferance warehouse, acted dishonestly in his business dealings with customs brokers, importers, carriers, Her Majesty or servants of Her Majesty; or
- (e) has been incompetent in the operation of the sufferance warehouse.
- (2) Subject to section 9, the Minister may cancel a licence where, in his opinion,
- (a) the volume of goods being received in the sufferance warehouse is no longer sufficient to warrant the continued operation;
- (b) there is no longer a need for a sufferance warehouse in the area in which the sufferance warehouse is located; or
- (c) the Department is no longer able to provide customs services with respect to the sufferance warehouse.
- 9. The Minister shall, before cancelling a licence, except where he does so at the request of the licensee pursuant to paragraph 7(b), give to the licensee
 - (a) 90 days notice of the proposed cancellation;
 - (b) adequate information concerning any allegations with respect to any of the grounds described in paragraphs 8(1)(a) to (e) on which the Minister proposes to cancel the licence; and
 - (c) a reasonable opportunity to respond and make representations regarding why the licence should not be cancelled.

REINSTATEMENT OF LICENCE

10. The Minister may reinstate a suspended licence where the Minister is satisfied that the cause for the suspension no longer exists.

PART II—OPERATION OF SUFFERANCE WAREHOUSES

FACILITIES, EQUIPMENT, PERSONNEL AND STANDARDS

- 11. (1) Every licensee shall provide, at the sufferance warehouse in respect of which his licence was issued
 - (a) washroom facilities and offices for the use of officers, and the heat, light and cleaning services necessary for those facilities and offices, where so requested by the chief officer of customs:
 - (b) adequate space for the examination of imported goods by officers, where requested by the chief officer of customs;
 - (c) the personnel and equipment necessary to ensure that the goods to be examined by an officer are made available to the officer for examination; and
 - (d) a detention compound or parking area for the storage of imported goods that are held in a conveyance, where so requested by the chief officer of customs.
- (2) Where a sufferance warehouse is restricted by the terms and conditions of its licence to the receipt of goods arriving by motor vehicles used for commercial purposes, the licensee may lease space to any carrier who has requested space for his exclusive use in the operation of a separate sufferance warehouse.

- 12. Every licensee shall take reasonable measures to ensure that
- (a) the imported goods received in the sufferance warehouse in respect of which the licence was issued are stored safely and securely; and
- (b) no person, other than the licensee, an employee of the licensee or an employee of a carrier engaged in the delivery of goods to or the removal of goods from the sufferance warehouse, is permitted to enter any place therein where goods are stored, without the written authorization or the attendance of an officer.
- 13. (1) Every licensee shall make a schedule of the charges payable for the services offered by the licensee, including the charges payable for the use of any space, compound or area referred to in paragraph 11(1)(b) or (d) or subsection 11(2), and shall make the schedule available for examination by any person who requests to see it.
 - (2) The charges set out in a schedule referred to in subsection (1) shall be reasonable.
- (3) Any facilities and services provided to an officer under paragraph 11(1)(b), (c) or (d) shall be provided free of charge.

RECEIPT OF GOODS

- 14. Every licensee shall acknowledge the receipt of goods in the sufferance warehouse by
- (a) endorsing the bill of lading, way-bill or other similar transportation document presented to him by the carrier;
- (b) endorsing the customs document on which the goods were reported under the *Reporting of Imported Goods Regulations*; or
- (c) issuing a transfer document to the carrier.

TIME LIMITS

- 15. (1) Subject to subsections (2) and (3), where goods in a sufferance warehouse have not been removed therefrom within 40 days after the day on which the goods were reported under section 12 of the Act, the goods may be deposited in a place of safekeeping as provided for in subsection 37(1) of the Act.
- (2) Where perishable goods in a sufferance warehouse have not been removed therefrom within four days after the day on which they were reported under section 12 of the Act, the goods may be deposited in a place of safekeeping as provided for in subsection 37(1) of the Act.
- (3) Where goods in a sufferance warehouse are prescribed substances within the meaning of the *Atomic Energy Control Act* or prescribed items within the meaning of the *Atomic Energy Control Regulations* and have not been removed therefrom within 14 days after the day on which the goods were reported under section 12 of the Act, the goods may be deposited in a place of safekeeping as provided for in subsection 37(1) of the Act.

RECORD KEEPING

- **16.** (1) Every licensee shall keep detailed records of all goods received in the sufferance warehouse in respect of which his licence was issued and of all goods removed therefrom.
- (2) The records referred to in subsection (1) shall be kept for a period beginning on the day on which the records are made and ending three years after the day on which the goods are removed from the sufferance warehouse.

ALTERATION OF GOODS

17. Goods may be manipulated, unpacked, packed, altered or combined with other goods while in a sufferance warehouse only where those goods consist of films or videotapes being modified to preclude their classification under code 9956 of Schedule VII to the *Customs Tariff*, and to meet the requirements of a provincial body charged with reviewing films and videotapes in the province in which the sufferance warehouse is located and only where those goods are in a sufferance warehouse that is restricted by the terms and conditions of its licence as specified in the licence for its operation, to receiving films and videotapes for review by that provincial body. SOR/88-85.

DETERMINATION OF THE TARIFF CLASSIFICATION OF SUGAR, MOLASSES AND SUGAR SYRUP REGULATIONS

SOR/86-951, as am. SOR/88-533.

Regulations respecting the method to be followed in determining the Tariff Classification of Sugar, Molasses and Sugar

SHORT TITLE

1. These Regulations may be cited as the *Determination of the Tariff Classification of Sugar, Molasses and Sugar Syrup Regulations*.

INTERPRETATION

2. In these Regulations, "ICUMSA" means the International Commission for Uniform Methods of Sugar Analysis («ICUMSA»).

APPLICATION

- **4.** The tariff classification for molasses and sugar syrup shall be determined from the results of analysis obtained by following one of the two methods for ascertaining reducing sugars adopted by ICUMSA set out in the schedule. SOR/88-533.
- **5.** Sugar polarimeters, polarimeter cells, volumetric glassware and other laboratory apparatus and reagents used in the determination of the tariff classification of sugar, molasses and sugar syrup shall meet the appropriate ICUMSA standards. SOR/88-533.

SCHEDULE

(Section 4)

METHODS FOR ASCERTAINING REDUCING SUGARS

- 1. The United Molasses (UM) Modifications of the Lane and Eynon Method for the Determination of Total Reducing Sugars after Hydrolysis adopted by ICUMSA in the *Report of the Proceedings of the Eighteenth Session*, 1982, Subject 8, Recommendation 9.
- 2. Determination of Reducing Sugars by the Land and Eynon Constant Volume Procedure adopted by ICUMSA in the *Report of the Proceedings of the Seventeenth Session*, 1978, Subject 14, Recommendation 1.

DIRECT SHIPMENT OF GOODS REGULATIONS

SOR/86-876, as am. SOR/89-184. (French only).

Regulations prescribing the terms and conditions subject to which goods exported to Canada from any country but that pass in transit through another country shall be deemed to be shipped directly to Canada from the first mentioned country

SHORT TITLE

1. These Regulations may be cited as the Direct Shipment of Goods Regulations.

GENERAL

- **2.** (1) For the purposes of section 54 of the *Customs Act*, where goods are exported to Canada from any country but pass in transit through another country, the goods shall be deemed to be shipped directly to Canada from the first mentioned country on condition that the journey of the goods from that country to Canada is uninterrupted and the importer of the goods complies with section 3.
- (2) For the purposes of subsection (1), the transfer of goods from one carrier to another carrier is not an interruption of the journey of the goods to Canada.
- 3. (1) Subject to subsection (2), the importer of any goods referred to in subsection 2(1) shall, where an officer so requests, submit the original bill of lading for the goods, or a certified copy thereof, to the officer.
- (2) Where the original bill of lading for the goods, or a certified copy thereof, is not available, the importer of the goods shall, where an officer so requests, provide the officer with such other information or documents as are available to the importer for the purpose of enabling the officer to determine the country of export of the goods.

DIVERSION OF IMPORTED GOODS TIME LIMITS AND EXEMPTION REGULATIONS

SOR/86-874

Regulations prescribing time limits for the application of sections 88 to 92 of the Customs Act and the circumstances in which certain imported goods used in emergencies are exempted from the operation of those sections

SHORT TITLE

1. These Regulations may be cited as the *Diversion of Imported Goods Time Limits and Exemption Regulations*.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act;
- "emergency".—"emergency" means a medical emergency, fire, flood or any disaster that threatens life, property or the environment.

TIME LIMITS

3. Subject to sections 4 and 5, sections 88 to 92 of the Act apply to all imported goods for a period of six years following the release of the goods.

EXEMPTIONS FOR EMERGENCY USE

- **4.** Imported goods that are temporarily and necessarily diverted to a use other than that for which they were released in response to an emergency are exempt from the operation of sections 88 to 92 of the Act for so long as the goods may be used in response to that emergency.
- **5.** Imported goods that are necessarily consumed in response to an emergency are exempt from the operation of sections 88 to 92 of the Act.

DUTY FREE SHOP REGULATIONS

SOR/86-1072, as am. SOR/91-274; SOR/92-189.

Regulations respecting Duty Free Shops

SHORT TITLE

1. These Regulations may be cited as the Duty Free Shop Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act; (Loi)
- "applicant".—"applicant" means a person who applies for a licence; (demandeur)
- "border crossing point".—"border crossing point" means a place on the international border between Canada and the United States at which there is a customs office; (poste frontalier)
- "chief officer of customs".—"chief officer of customs", with respect to a duty free shop or a proposed duty free shop, means the manager of the customs office or customs offices that serve the area in which the duty free shop is located or is proposed to be located; (agent en chef des douanes)
- "Department".—"Department" means that part of the Department of National Revenue for which the Deputy Minister for Customs and Excise is the lawful deputy of the Minister; (ministère)
- "excisable goods".—"excisable goods" means goods that are subject to the Excise Act; (marchandises assujetties à l'accise)
- "intoxicating liquor".—"intoxicating liquor" has the same meaning as in the *Importation of Intoxication Liquors Act*; (boissons alcoolisées)
- "licence".—"licence" means a licence to operate a place as a duty free shop; (agrément)
- "licensee".—"licensee" means a person to whom a licence has been issued; (exploitant)
- "permanent resident".—"permanent resident" has the same meaning as in the *Immigration Act*, 1976. (résident permanent)

PART I—LICENSING OF DUTY FREE SHOPS

ISSUANCE OF LICENCE

- 3. (1) Subject to subsection (6), the Minister may, where he deems it necessary or desirable to do so, issue a licence to any qualified person who makes an application therefor in accordance with subsection (2) and who gives such security as may be required under section 4 and pays any fee required to be paid under section 5.
- (2) Any person who wishes to apply for a licence shall submit a completed application therefor in the prescribed form to the Deputy Minister.
 - (3) A corporation is qualified to operate a duty free shop at a border crossing point if
 - (a) the corporation is incorporated in Canada; and

- (b) all the shares of the corporation are beneficially owned by Canadian citizens or permanent residents who
 - (i) are of good character,
 - (ii) maintain their principal residence in Canada, and
 - (iii) resided in Canada for at least 183 days of the year preceding the year in which the corporation makes the application for the licence.
- (4) A person other than a corporation is qualified to operate a duty free shop at a border crossing point if the person
 - (a) is a Canadian citizen or a permanent resident;
 - (b) is of good character;
 - (c) maintains his principal residence in Canada; and
 - (d) resided in Canada for at least 183 days of the year preceding the year in which the person makes the application for the licence.
- (5) A person is qualified to operate a duty free shop at an airport owned by Her Majesty in right of Canada and operated by the Minister of Transport or any designated airport authority within the meaning of the *Airport Transfer (Miscellaneous Matters) Act* if the person has been granted a lease or other right to occupy the place proposed to be operated as a duty free shop. SOR/92-189.
 - (6) The Minister shall not issue a licence to an applicant unless he is satisfied that
 - (a) the applicant meets the qualifications referred to in subsection (3), (4) or (5), as the case may be;
 - (b) the applicant is acting in compliance with every by-law, regulation, ordinance or other law that governs occupational health and safety, zoning or the repair, construction or maintenance of buildings or other structures used primarily as retail shops;
 - (c) the applicant has sufficient financial resources to enable him to lease or purchase the place proposed to be operated as a duty free shop;
 - (d) the applicant has sufficient financial resources to enable him to provide the facilities, equipment and personnel required under these Regulations;
 - (e) an adequate range of goods is not available in, or adequate service is not provided by, any duty free shop already located in the area in which the proposed duty free shop is to be located;
 - (f) the establishment of a duty free shop will not impede the flow of traffic in the area in which the proposed duty free shop is to be located; and
 - (g) the Department is able to provide customs services with respect to the proposed duty free shop.
- (7) The Minister may issue a licence to a person who was operating a duty free shop on the day that sections 24, 30, 37, 164 and 166 of the Act came into force, where he is satisfied that that person meets the requirements for applicants set out in subsection (6), and where that person gives or has given such security as may be required under section 4 and pays or has paid any fee required to be paid under section 5.

SECURITY

- **4.** (1) An applicant shall, before a licence is issued to him, give security in an amount that is determined by the Minister, but in no case shall the amount of security be less than \$10,000.
- (2) The Minister may at any time require a licensee to increase the amount of security given under subsection (1) to an amount sufficient to ensure the payment of any duties payable in respect of the goods in the duty free shop.
- (3) The security given under subsection (1) shall be deposited with the chief officer of customs and shall be in the form of
 - (a) cash;
 - (b) a certified cheque;
 - (c) a transferable bond issued by the Government of Canada; or
 - (d) a bond issued by
 - (i) a company that is registered and holds a certificate of registry to carry on the fidelity or surety class of insurance business and that is approved by the President of the Treasury Board as a company whose bonds may be accepted by the Government of Canada,
 - (ii) a member of the Canadian Payments Association referred to in section 4 of the Canadian Payments Association Act,
 - (iii) a corporation that accepts deposits insured by the Canada Deposit Insurance Corporation or the $R\acute{e}gis$ de l' assurance- $d\acute{e}p\^{o}ts$ du $Qu\acute{e}bec$ to the maximum permitted by the statutes under which those institutions were established,
 - (iv) a credit union as defined in paragraph 137(6)(b) of the *Income Tax Act*, or
 - (v) a corporation that accepts deposits from the public, if repayment of the deposits is guaranteed by Her Majesty in right of a province. SOR/91-274.

LICENCE FEES

- **5.** (1) Every licensee shall pay to the chief officer of customs a fee for his licence, determined in the manner described in subsection (2) or (5), as the case may be.
- (2) Subject to subsection (4), a licensee of a duty free shop at an airport shall pay, for the period beginning on the day on which the licence is issued and ending on March 31 in the same fiscal year and for each fiscal year of operation thereafter, a fee determined on the basis of the amount of security deposited under section 4, in accordance with the following table:

TABLE

Amount of Security Deposited	Amount of Fee Per Fiscal Year
\$10,000	\$100
\$10,0001 to \$50,000	\$800
\$50,001 to \$200,000	\$1.500
\$200,001 to \$500,000	\$3,000
More than \$500,000	\$5,000

- (3) The fee payable under subsection (2) for the period beginning on the day on which the licence is issued and ending on March 31 in the same fiscal year shall be paid on or before the issuance of the licence and the fee for each fiscal year of operation thereafter shall be paid on or before April 1 of that fiscal year of operation.
- (4) Where the licence is issued in respect of a duty free shop in an airport for a period of less than twelve months in a fiscal year, the fee payable under subsection (2) for that fiscal year shall be in an amount that is the same proportion of the applicable fee as the number of months for which the licence is issued is of the fiscal year.
- (5) A licensee of a duty free shop at a border crossing point shall pay a fee in an amount that is equal to the aggregate of
 - (a) one per cent of the first \$500,000 of the annual gross revenue from sales,
 - (b) two per cent of the next \$500,000 of the annual gross revenue from sales, and
- (c) three per cent of the annual gross revenue from sales that exceeds \$1,000,000, calculated monthly and payable in monthly installments on the fifteenth day of the month following the month in which the sales were made.
- (6) For the purposes of this section, "fiscal year" means the period beginning on April 1 of a year and ending on March 31 of the year next following.

TERM OF LICENCE

- **6.** (1) Subject to subsection (2), a licence is valid for a period beginning on the date indicated on the licence as being the date on which the licence becomes effective and ending on the date indicated on the licence as being the date on which the licence expires.
 - (2) No licence shall be valid for more than five years.

AMENDMENT OF LICENCE

- 7. (1) The Minister may amend a licence only for the following purposes:
- (a) subject to subsection (2),
 - (i) to change a restriction specified in the licence as to the classes of goods that may be received in the duty free shop, or to specify such a restriction,
 - (ii) to change the circumstances specified in the licence in which goods may be received in the duty free shop, or to specify such circumstances; or
- (b) to change the name of the licensee, where the name of the licensee is changed.
- (2) The Minister may amend a licence for the purposes set out in subparagraph (1)(a)(i) or (ii) only where he has given 90 days notice of the proposed amendment.

CANCELLATION OR SUSPENSION OF LICENCES

- **8.** Subject to section 10, the Minister may cancel a licence where the licensee
- (a) has made a misrepresentation in his application for the licence;
- (b) no longer owns or leases the place that is licensed as a duty free shop;
- (c) requests the Minister in writing to cancel the licence;
- (d) no longer qualifies under these Regulations for a licence; or

- (e) is bankrupt.
- 9. (1) The Minister may suspend or, subject to section 10, cancel a licence where the licensee
 - (a) is the subject of a receivership in respect of his debts;
 - (b) fails to comply with any Act of Parliament or regulation made pursuant thereto;
 - (c) has not acted in compliance with every by-law, regulation, ordinance or other law that governs occupational health and safety, zoning or the repair, construction or maintenance of buildings or other structures used primarily as retail shops;
 - (d) has, in the course of his operation of the duty free shop, acted dishonestly in his business dealings with customers, suppliers, customs brokers, carriers, Her Majesty or servants of Her Majesty; or
 - (e) has failed to carry out, within a reasonable time and in a reasonable manner, any proposal made in the application for the licence.
- (2) Subject to section 10, the Minister may suspend or cancel a licence where, in his opinion,
 - (a) the volume of goods sold in the duty free shop is no longer sufficient to warrant the continued operation of the duty free shop;
 - (b) there is no longer a need for a duty free shop in the area in which the duty free shop is located; or
 - (c) the Department is no longer able to provide customs services with respect to the duty free shop.
- 10. The Minister, before suspending or cancelling a licence, except where he cancels a licence at the request of the licensee pursuant to paragraph 8(c), shall give to the licensee
 - (a) 90 days notice of the proposed suspension or cancellation;
 - (b) adequate information concerning any allegations with respect to any of the grounds described in paragraph 8(a) or (d) or in paragraphs 9(1)(b) to (e) on which the Minister proposes to cancel the licence; and
 - (c) a reasonable opportunity to respond and to make representations as to why the licence should not be suspended or cancelled, as the case may be.

REINSTATEMENT AND RENEWALS OF LICENCES

- 11. The Minister may reinstate a suspended licence where the Minister is satisfied that the cause for the suspension no longer exists.
 - 12. The Minister may renew a licence on the expiration of its term on condition that
 - (a) in the case of a duty free shop at a border crossing point, the licensee submits an application therefor in the prescribed form to the Deputy Minister at least six months before the date on which the licence is to expire;
 - (b) in the case of a duty free shop at an airport, the licensee has been granted a new lease, an extension of the existing lease or a new right to occupy the place operated as a duty free shop; and
 - (c) no grounds exist for the Minister to suspend or cancel the licence.

PART II—OPERATION OF DUTY FREE SHOPS

FACILITIES. SERVICES AND STANDARDS

- 13. (1) Every licensee shall, at the duty free shop in respect of which his licence was issued,
 - (a) provide or make available public washroom facilities that are easily accessible to disabled persons;
 - (b) provide or make available public telephones that are easily accessible to disabled persons, if the telephone company providing service to the duty free shop agrees to provide such telephone service;
 - (c) provide service in English and French if the duty free shop is located in an area in which customs services are provided in English and French;
 - (d) display notices in English and French indicating
 - (i) that the goods sold in the duty free shop are for immediate exportation only and must be reported under the Act if they are returned to Canada,
 - (ii) the circumstances in which goods imported into the United States by individuals are exempt from duties, and
 - (iii) the circumstances in which goods imported into Canada by individuals are exempt from duties;
 - (e) for the purpose of determining the value in Canadian dollars of the currency of a country other than Canada in respect of the sale of goods in a duty free shop at an airport, use an exchange rate that does not vary more than two percentage points from the rate quoted for the day on which the sale is made by a Canadian chartered bank selected by the Minister for the purchase of the currency of that other country; and
 - (f) for the purpose of determining the value in Canadian dollars of the currency of a country other than Canada in respect of the sale of goods in a duty free shop at a border crossing point, use an exchange rate that does not vary more than two percentage points from the rate communicated for the day on which the sale is made by the Minister to customs offices under the Currency Exchange for Customs Valuation Regulations.
- (2) Where a duty free shop forms only part of a building, the licensee shall keep the duty free shop separate from the remainder of the building by a partition or other suitable structure.
- (3) No licensee shall make alterations to the structure of a duty free shop without the approval of the Minister.
 - 14. Every licensee shall ensure that
 - (a) the goods received in the duty free shop are stored and marked in such a manner that
 - (i) those goods may be readily identified and checked against the licensee's records of inventory and, in the case of imported goods, against the relevant customs accounting documents, and
 - (ii) domestic goods may be readily distinguished from imported goods;
 - (b) the goods received in the duty free shop are held in an area designated by the chief officer of customs until, in the case of imported goods, those goods have been accounted for under the Act or, in the case of domestic goods, those goods have been approved by an officer for entry into the licensee's inventory;
 - (c) the duty free shop may be locked and sealed by an officer where the chief officer of

customs requests that the duty free shop be locked and sealed, for the purpose of enabling an officer to check the goods therein against the licensee's records of inventory;

- (d) the duty free shop may be locked and sealed by an officer in the event that the licensee's licence expires or is cancelled or suspended and may be kept locked and sealed until
 - (i) in the case of goods therein other than excisable goods or wine, the duties and taxes payable on the goods have been paid or the goods have been disposed of in accordance with the laws relating to customs and excise, and
 - (ii) in the case of goods therein that are excisable goods or wine, the goods have been disposed of in accordance with the laws relating to customs and excise or, in the case of intoxicating liquor, in accordance with the laws relating to intoxicating liquor of the province in which the duty free shop is located; and
- (e) the duty free shop is kept suitable for the safekeeping of the goods stored therein.
- 15. (1) No intoxicating liquor shall be sold in a duty free shop in a province unless the licensee has obtained written approval to sell intoxicating liquor from the board, commission or agency that is authorized by the laws of the province to sell or to authorize the sale of intoxicating liquor in that province.
- (2) No intoxicating liquor shall be transferred from a duty free shop in a province to another duty free shop or to a bonded warehouse in the province unless the licensee has obtained written approval for the transfer from the board, commission or agency described in subsection (1).

RECEIPT OF GOODS

- 16. (1) Every licensee shall, on the arrival of goods at the duty free shop in respect of which his licence was issued,
 - (a) acknowledge the receipt of the goods by
 - (i) endorsing the bill of lading, way-bill or other similar transportation document presented to him by the carrier, or
 - (ii) endorsing the document by which the licensee accounts for inventory; and
 - (b) immediately notify the chief officer of customs of the receipt of the goods.
- (2) Before any goods are taken into a duty free shop, the licensee shall present to the chief officer of customs any documents required to be presented to him under the Act or any regulations made pursuant thereto.

RECORD KEEPING

- 17. (1) Every licensee shall keep detailed records of all goods received in the duty free shop in respect of which his licence was issued, goods held in inventory in the duty free shop and goods sold or released from the duty free shop.
- (2) The records referred to in subsection (1) shall be kept for a period beginning on the day on which the records are made and ending six years after the day on which the goods are sold or released.

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TRANSFER OF OWNERSHIP OF GOODS

- **18.** (1) Subject to subsections (2) to (4), the ownership of goods in a duty free shop may be transferred only by sale to persons who are about to leave Canada.
- (2) The ownership of goods in a duty free shop may be transferred to the person who sold them to the licensee, on condition that the goods are dealt with in accordance with the laws relating to customs and excise.
- (3) With the approval of the chief officer of customs, the ownership of goods in a duty free shop may be transferred to a person having a licence in respect of another duty free shop, on condition that the goods are dealt with in accordance with any law relating to customs and excise, and, in the case of intoxicating liquor, in accordance with section 15.
- (4) Where a licensee's licence is about to expire or be cancelled and a new licensee is to be licensed to operate a duty free shop on the same premises as the premises of the licensee, the ownership of the goods in the duty free shop may be transferred to the proposed new licensee.

EXPORTERS' AND PRODUCERS' RECORDS REGULATIONS

SOR/93-556

Regulations respecting the keeping of records by persons who export goods or cause goods to be exported goods for sale or for any industrial, occupational, commercial, institutional or other like use, or by other persons who have completed and signed a certificate in accordance with subsection 97.01(1) of the Customs

SHORT TITLE

1. These Regulations may be cited as the Exporters' and Producers' Records Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act;
- "advance ruling".—"advance ruling" means an advance ruling referred to in Article 509 of NAFTA;
- "commercial goods".—"commercial goods" means goods exported from Canada for sale or for any industrial, occupational, commercial, institutional or other like use;
- "indirect materials".—"indirect materials" has the same meaning as in subsection 2(1) of the NAFTA Rules of Origin Regulations;
- "materials".—"materials" has the same meaning as in subsection 2(1) of the NAFTA Rules of Origin Regulations;
- "producer".—"producer" has the same meaning as in subsection 2(1) of the NAFTA Rules of Origin Regulations;
- "production".— "production" has the same meaning as in subsection 2(1) of the NAFTA Rules of Origin Regulations;

GENERAL.

- 3. Every person who exports or causes to be exported commercial goods and who is required by subsection 97.2(1) of the Act to keep records in respect of those commercial goods shall keep, for the period of six years following the exportation to the commercial goods, all records that relate to
 - (a) the origin, purchase, importation, costs and value of the commercial goods;
 - (b) payment for the commercial goods;
 - (c) the usage to which the commercial goods are put in Canada; and
 - (d) the exportation of the commercial goods.
 - 4. Every exporter of commercial goods who has completed and signed a certificate in

SOR/93-556 S. 8

accordance with subsection 97.01(1) of the Act and who is required by subsection 97.2(1) of the Act to keep records in respect of those commercial goods shall keep, for the period of six years following the date on which the certificate was signed, in addition to the records described in section 3.

- (a) all records that relate to an application for, or receipt of, any advance ruling by the customs administration of a NAFTA country on the origin or marking of the commercial goods; and
- (b) all written representations received from the producer of the commercial goods that state that the commercial goods meet the rules of origin set out in or contemplated by NAFTA.
- **5.** Every producer of commercial goods who has completed and signed a certificate in accordance with subsection 97.01(1) of the Act and who is required by subsection 97.2(1) of the Act to keep records in respect of those commercial goods shall keep, for the period of six years following the date on which the certificate was signed, all records that relate to the production of the commercial goods, including all records that relate to
 - (a) the purchase, cost and value of, and payment for, the commercial goods;
 - (b) the purchase, cost and value of, and payment for, all materials and indirect materials used in the production of the commercial goods; and
 - (c) an application for, or receipt of, any advance ruling by the customs administration of a NAFTA country on the origin or marking of the commercial goods or of any materials and indirect materials used in the production thereof.
- **6.** The records referred to in sections 3 to 5 may be kept on microfilm by means of any photographic or microphotographic process that is in accordance with National Standard of Canada CAN2-72.11-79, *Microfilm as Documentary Evidence*, published by the Canadian General Standards Board in August 1979, as amended from time to time.
- 7. The records referred to in sections 3 to 5 may be kept on machine-sensible data media if the media can be related back to the supporting source documents and are supported by a system capable of producing accessible and readable copy.

INSPECTION OF RECORDS

8. Every person who is required to keep records in accordance with sections 3 to 5 shall make those records available for inspection at all reasonable times by an officer of the customs administration of a NAFTA country other than Canada conducting a verification visit in accordance with Article 506 of NAFTA and shall provide a facility for the inspection thereof.

FEES FOR DOCUMENTS REGULATIONS

SOR/86-1028

Regulations prescribing the circumstances in which fees may be charged for making or certifying copies of documents pursuant to section 108 of the Customs Act and the amount of such fees

SHORT TITLE

1. These Regulations may be cited as the Fees for Documents Regulations.

INTERPRETATION

2. In these Regulations,

"Act".—"Act" means the Customs Act;

"document".—"document" means any book, records, writing or other document.

APPLICATION

3. The fees referred to in sections 4 and 5 are the fees payable by persons from whom any document is obtained for the purposes of the Act, or on behalf of whom any document is given to an officer for the purposes of the Act, and for whom a service referred to in those sections is provided by an officer under section 108 of the Act.

FEES

- **4.** (1) A person referred to in section 3 who requests that a copy of a document be made shall pay
 - (a) an application fee of \$5.00 at the time the request is made; and
 - (b) where applicable, a fee for reproduction of a document or part thereof to be calculated in accordance with the following;
 - (i) for photocopying a page, \$0.20 per page,
 - (ii) for microfiche duplication (non-silver), \$0.40 per fiche,
 - (iii) for 16 mm microfilm duplication (non-silver), \$12.00 per 30.5 m roll,
 - (iv) for 35 mm microfilm duplication (non-silver), \$14.00 per 30.5 m roll,
 - (v) for microform to paper duplication, \$0.25 per page, and
 - (vi) for magnetic tape-to-tape duplication, \$25.00 per 731.5 m reel.
- (2) Where the document in respect of which a request is made pursuant to subsection (1) is a non-computerized record, an officer may require, in addition to the application fee prescribed by paragraph (1)(a), payment of a fee in the amount of \$2.50 per person for each quarter hour in excess of five hours that is spent by the person on searching for the document and on preparation.
- (3) Where a copy of the document in respect of which a request is made pursuant to subsection (1) is produced from a machine readable record, an officer may require, in addition

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to any other fees prescribed in this section, payment of a fee for the cost of production and programming calculated in accordance with the following:

- (a) \$16.50 per minute for the cost of the central processor and all locally attached devices; and
- (b) \$5.00 per person for each quarter hour that is spent by that person on programming a computer.
- **5.** A person referred to in section 3 who requests that a document be certified shall pay an application fee of \$5.00 unless that person has paid an application fee pursuant to paragraph 4(1)(a).

GOODS FOR SHIPS AND AIRCRAFT DRAWBACK REGULATIONS

SOR/86-796, as am. SOR/88-118 (French only); SOR/90-470.

Regulations respecting the drawback of duties paid on imported goods deemed to have been exported, and imported goods and materials where they, or the same quantity of domestic or imported goods and materials of the same class, are used or consumed in the manufacture or production in Canada of goods deemed to have been exported, by virtue of their being supplied as ships stores, used for the equipment, repair or reconstruction of ships or aircraft or in the laying or repairing of oceanic telegraph cables

SHORT TITLE

1. These Regulations may be cited as the Goods for Ships and Aircraft Drawback Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act;
- "ships stores".—"ships stores" means goods that have been designated as ships stores by the *Ships Stores Regulations*;
- "value".— "value" means, in respect of a product, including a by-product, or of merchantable scrap of waste
 - (a) where the manufacturer or producer has sold the product or merchantable scrap or waste in an arm's length transaction, the price thereof, or
 - (b) in any other case, the price at which the manufacturer or producer would ordinarily have sold the product or merchantable scrap or waste in an arm's length transaction at the time the application for a drawback is filed at a customs office.

APPLICATION

- 3. These Regulations apply to the grant, under subsection 82(1) of the Act and in the circumstances prescribed in section 6, of a drawback of duties paid in respect of
 - (a) imported goods,
 - (b) imported goods used in, wrought into or attached to goods manufactured or produced in Canada,
 - (c) imported materials, other than fuel or plant equipment, directly consumed or expended in the manufacture or production of goods in Canada,
 - (d) imported goods, where the same quantity of domestic or imported goods of the same class is used in, wrought into or attached to goods manufactured or produced in Canada, or

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(e) imported materials, other than fuel or plant equipment, where the same quantity of domestic or imported materials of the same class is directly consumed or expended in the manufacture or production of goods in Canada,

where the imported goods referred to in paragraph (a) or the goods manufactured or produced in Canada referred to in any of paragraphs (b) to (e) are deemed to have been exported by virtue of their being

- (f) ships stores that are supplied for use and used on board a conveyance in accordance with the *Ships Stores Regulations*,
- (g) used for the equipment, repair or reconstruction of a class of ships or aircraft set out in the schedule, or
- (h) delivered to a telegraph cable ship proceeding on an ocean voyage for use in the laying or repairing of oceanic telegraph cables outside Canada.

PERSON WHO MAY CLAIM

- 4. A drawback may only be claimed by
- (a) the supplier of the goods deemed to have been exported; or
- (b) the person who used the goods for the equipment, repair or reconstruction of ships or aircraft referred to in paragraph 3(g).

APPLICATION FOR DRAWBACK

5. An application for a drawback shall be presented at a customs office or sent by registered mail to a customs office, in the prescribed form, within four years after the duties were paid. SOR/90-470.

CIRCUMSTANCES AND CONDITIONS

6. A drawback may only be granted if

- (a) the imported goods referred to in paragraph 3(a) or the goods manufactured or produced in Canada referred to in any of paragraphs 3(b) to (e) were deemed to have been exported before an application for the drawback is filed;
- (b) the imported goods referred to in paragraph 3(a) or the goods manufactured or produced in Canada referred to in any of paragraphs 3(b) to (e) were not used in Canada for any purpose prior to their deemed exportation;
- (c) in the case of imported goods or materials referred to in paragraph 3(d) or (e), the goods or materials were, during the twelve months immediately preceding the date of the commencement of the manufacture or production of the goods deemed to have been exported, used or consumed in the same plant in Canada in which domestic or imported goods or materials of the same class were used or consumed in the manufacture or production of the goods deemed to have been exported;
- (d) in the case of goods used for the equipment, repair or reconstruction of a ship or aircraft referred to in paragraph 3(g), the goods become part of the ship or aircraft or part of the equipment of that ship or aircraft;
- (e) in the case of goods delivered to a telegraph cable ship proceeding on an ocean voyage for use in the laying or repairing of oceanic telegraph cables outside Canada, the ship is

registered and is used exclusively for the laying or repairing of oceanic telegraph cables; and

(f) the applicant provides a waiver, in the prescribed form, from all other persons entitled to claim a drawback, refund or remission of the duties, waiving their right to do so.

GOODS AND MATERIALS OF THE SAME CLASS

- 7. For the purposes of paragraphs 82(1)(d) and (e) of the Act, domestic and imported goods and materials shall be considered to be of the same class if the goods or materials are so similar that they may be interchangeably
 - (a) used in, wrought into, or attached to the goods manufactured or produced in Canada, in the case of goods; or
 - (b) directly consumed or expended in the manufacture or production of the goods manufactured or produced in Canada, in the case of materials.

REDUCTION IN RESPECT OF A BY-PRODUCT OR MERCHANTABLE SCRAP OR WASTE

- **8.** (1) Where a drawback of duties paid in respect of goods or materials is granted and the goods or materials or, in the case of imported goods or materials referred to in paragraph 3(d) or (e), the same quantity of domestic or imported goods or materials of the same class enter into a process of manufacture or production that results in a by-product, the amount of the drawback shall be reduced by the same proportion that the value of the by-product is of the total value of the products that result from the processing of the goods or materials.
- (2) Where a drawback of duties paid in respect of goods or materials is granted and the goods or materials or, in the case of imported goods or materials referred to in paragraph 3(d) or (e), the same quantity of domestic or imported goods or materials of the same class enter into a process of manufacture or production that results in merchantable scrap or waste, the amount of the drawback shall be reduced by the amount obtained by applying to the value of the merchantable scrap or waste the lesser of
 - (a) the rate of duties that applies, at the time the merchantable scrap or waste results from the process, to merchantable scrap or waste of the same kind; and
 - (b) the rate of duties paid in respect of the goods or materials.

SCHEDULE

(Section 3)

- 1. Ocean-going ships operating or being repaired or reconstructed to operate exclusively in international trade
- 2. Foreign warships, within the meaning of the Ships Stores Regulations
- 3. Telegraph cable ships, within the meaning of the Ships Stores Regulations
- 4. Aircraft operating exclusively in international flights
- 5. Ships registered in a country other than Canada that are used exclusively for pleasure purposes
- 6. International aircraft, within the meaning of the Ships Stores Regulations

GOODS IMPORTED AND EXPORTED DRAWBACK REGULATIONS

SOR/86-795, as am. SOR/90-470.

Regulations respecting the drawback of duties paid on imported goods subsequently exported

SHORT TITLE

1. These Regulations may be cited as the Goods Imported and Exported Drawback Regulations.

APPLICATION

2. These Regulations apply to the grant, under subsection 82(1) of the *Customs Act* and in the circumstances prescribed in section 5, of a drawback of duties paid in respect of imported goods subsequently exported.

PERSON WHO MAY CLAIM

3. A drawback may only be claimed by the importer or exporter of the imported goods subsequently exported.

APPLICATION FOR DRAWBACK

4. An application for a drawback shall be presented at a customs office or sent by registered mail to a customs office, in the prescribed form, within four years after the duties were paid, SOR/90-470.

CIRCUMSTANCES AND CONDITIONS

- 5. A drawback may only be granted if
- (a) the imported goods were exported before an application for the drawback is filed;
- (b) the imported goods were not
 - (i) used in Canada for any purpose other than the development or production of goods to be exported,
 - (ii) used as plant equipment, or
 - (iii) damaged prior to exportation; and
- (c) the applicant provides a waiver, in the prescribed form, from all other persons entitled to claim a drawback, refund or remission of the duties, waiving their right to do so.

IMPORTERS' RECORDS REGULATIONS

SOR/86-1011, as am. SOR/89-67; SOR/89-482; SOR/93-554.

Regulations respecting the keeping of records by persons who import goods or cause goods to be imported for sale or for any industrial, occupational, commercial, institutional or other like use

SHORT TITLE

1. These Regulations may be cited as the Importers' Records Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act;
- "commercial goods".—"commercial goods" means goods imported into Canada for sale or for any industrial, occupational, commercial, institutional or other like use. SOR/93-554.

GENERAL

- **2.** Every person who is required by subsection 40(1) of the Act to keep records in respect of commercial goods shall keep, for the period of six years following the importation of the commercial goods, all recrods that relate to
 - (a) the origin, marking, purchase, importation, costs and value of the commercial goods;
 - (b) payment for the commercial goods;
 - (c) the disposal of the commercial goods in Canada; and
 - (d) any application for an advance ruling made under subsection 43.1(1) of the Act in respect of the commercial goods. SOR/89-67; SOR/89-482; SOR/93-554.
- **3.** In addition to the records referred to in section 2, a person who imports or causes to be imported commercial goods that have been released free of duty or at a reduced rate of duty because of their intended use or because they were intended to be used by a specific person shall keep, for the same period time referred to in that section,
 - (a) a certificate or other record signed by the user of the commercial goods that shows the user's name, address and occupation and indicates the actual use made of the commercial goods; or
 - (b) in the case where the commercial goods have been diverted to a use other than that for which they were released free of duty or at a reduced rate of duty or have been sold or otherwise disposed of to a person not entitled to have the commercial goods so released, records that contain information sufficient to confirm that the full applicable duties have been paid. SOR/93-554.
- **4.** The records referred to in sections 2 and 3 shall be kept in such a manner as to enable an officer to perform detailed audits of the records and to obtain or verify the information on which a determination of the amount of the duties paid or payable was made.

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- **5.** All records referred to in sections 2 and 3 may be copied by any photographic or microphotographic process that is in accordance with the National Standard of Canada, CAN2-72.11-79, entitled *Microfilm as Documentary Evidence*, dated August, 1979, as amended to February, 1983 and published by the Canadian General Standards Board, and kept in that form for the six year period referred to in section 2 and the original of any record so copied may be destroyed or otherwise disposed of by the person required to keep that record. SOR/89-67.
- **6.** All records referred to in sections 2 and 3 may be kept on machine-sensible data media if the media can be related back to the supporting source documents and are supported by a system capable of producing accessible and readable copy. SOR/93-554.

ENFORCEMENT

- 7. Where a person has not kept records in accordance with these Regulations, preferential tariff treatment under NAFTA may be denied or withdrawn in respect of the commercial goods that are the subject of those records. SOR/93-554.
- **8.** Where any person who is required to produce records in accordance with subsection 43(1) of the Act fails to do so, preferential tariff treatment under NAFTA may be denied or withdrawn in respect of the commercial goods that are the subject of those records. SOR/93-554

INTEREST RATE FOR CUSTOMS PURPOSES REGULATIONS

SOR/86-1121, as am. SOR/88-72; SOR/89-53; SOR/92-517.

Regulations prescribing rules for determining a rate of interest for customs purposes

SHORT TITLE

1. These Regulations may be cited as the Interest Rate for Customs Purposes Regulations.

INTERPRETATION

2. In these Regulations, "quarter" means a three-month period ending on March 31, June 30, September 30 or December 31.

DETERMINATION OF RATE OF INTEREST

3. For the purposes of any provision of the *Customs Act* and the *Customs Tariff* requiring interest to be paid in respect of each month or fraction of a month in a period, and for the purposes of any provision of the *Special Import Measures Act* requiring interest to be paid, the prescribed rate of interest in effect during any quarter is the rate (expressed as a percentage per month and rounded to the nearest one tenth of a percentage or, if the percentage is equidistant from two consecutive multiples of one tenth of a percentage, to the higher thereof) determined by the formula

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where A is the simple arithmetic mean of all amounts each of which is the weekly average equivalent yield (expressed as a percentage per year) of Government of Canada Treasury Bills that mature approximately three months after their date of issue and that were sold at a weekly auction of Government of Canada Treasury Bills during the first month of the immediately preceding quarter. SOR/88-72; SOR/89-53; SOR/92-517.

- 4. For the purposes of any provision of the *Customs Act* and the *Customs Tariff* requiring interest to be paid, other than a provision for which section 3 applies, the prescribed rate of interest in effect during any quarter is the simple arithmetic mean (expressed as a percentage per year and rounded to the nearest one tenth of a percentage or, if the percentage is equidistant from two consecutive multiples of one tenth of a percentage, to the higher thereof) of all amounts each of which is the weekly average equivalent yield (expressed as a percentage per year) of Government of Canada Treasury Bills that mature approximately three months after their date of issue and that were sold at a weekly auction of Government of Canada Treasury Bills during the first month of the immediately preceding quarter. SOR/88-72; SOR/92-517.
- 5. Sections 3 and 4, in their application for the purposes of any provision of the *Customs Act* requiring interest to be paid, come into force on May 30, 1992. SOR/92-517.

JOINT CANADA-UNITED STATES PROJECTS DRAWBACK REGULATIONS

SOR/86-793, as am. SOR/88-100 (French only); SOR/90-470.

Regulations respecting the drawback of duties paid on imported goods and materials where they, or the same quantity of domestic or imported goods and materials of the same class, are used or consumed in the manufacture or production in Canada of goods deemed to have been exported by virtue of their use in a project undertaken jointly by Canada and the United States or in an undertaking of the United States located in Canada

SHORT TITLE

1. These Regulations may be cited as the *Joint Canada-United States Projects Drawback Regulations*.

INTERPRETATION

- 2. In these Regulations,
- "Act",—"Act" means the Customs Act:
- "Crown corporation".—"Crown corporation", means a departmental corporation named in Schedule B or a parent Crown corporation named in Schedule C to the Financial Administration Act:
- "value".—"value" means, in respect of a product, including a by-product, or of merchantable scrap or waste,
 - (a) where the manufacturer or producer has sold the product or merchantable scrap or waste in an arm's length transaction, the price thereof, or
 - (b) in any other case, the price at which the manufacturer or producer would ordinarily have sold the product or merchantable scrap or waste in an arm's length transaction at the time the application for a drawback is filed at a customs office.

APPLICATION

- **3.** These Regulations apply to the grant, under subsection 82(1) of the Act and in the circumstances prescribed in section 7, of a drawback of duties, other than tax levied under the *Excise Tax Act*, paid in respect of
 - (a) imported goods used in, wrought into or attached to goods manufactured or produced in Canada,
 - (b) imported materials, other than fuel or plant equipment, directly consumed or expended in the manufacture or production of goods in Canada,
 - (c) imported goods, where the same quantity of domestic or imported goods of the same class is used in, wrought into or attached to goods manufactured or produced in Canada, or
 - (d) imported materials, other than fuel or plant equipment, where the same quantity of

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domestic or imported materials of the same class is directly consumed or expended in the manufacture or production of goods in Canada,

where the goods manufactured or produced in Canada

- (e) are purchased by the Government of the United States, its authorized agent, or a department of the Government of Canada or a Crown corporation acting on behalf of the Government of the United States;
- (f) are for use solely and exclusively in conjunction with
 - (i) a project undertaken jointly by the Government of Canada and the Government of the United States, or
- (ii) an undertaking, located in Canada, of the government of the United States; and (g) are or will become the property of the Government of the United States.

DEEMED EXPORTATION

4. Goods manufactured or produced in Canada as described in paragraphs 3(a) to (d) that satisfy all of the conditions referred to in paragraphs 3(e) to (g) shall, when they are delivered for use in accordance with paragraph 3(f), be deemed, pursuant to paragraph 82(2)(g) of the Act, to have been exported.

PERSON WHO MAY CLAIM

- 5. A drawback may only be claimed by
- (a) the supplier, manufacturer or producer of the goods deemed to have been exported; or
- (b) the department of the Government of Canada or the Crown corporation that purchases, on behalf of the Government of the United States, the goods deemed to have been exported.

APPLICATION FOR DRAWBACK

6. An application for a drawback shall be presented at a customs office or sent by registered mail to a customs office, in the prescribed form, within four years after the duties were paid. SOR/90-470.

CIRCUMSTANCES AND CONDITIONS

- 7. A drawback may only be granted if
- (a) the goods manufactured or produced in Canada were deemed to have been exported before an application for the drawback is filed;
- (b) the goods manufactured or produced in Canada were not used for any purpose prior to their deemed exportation;
- (c) in the case of imported goods and materials referred to in paragraph 3(c) or (d), the goods or materials were, during the twelve months immediately preceding the date of the commencement of the manufacture or production of the goods deemed to have been exported, used or consumed in the same plant in Canada in which domestic or imported goods of the same class were used or consumed in the manufacture or production of the goods deemed to have been exported; and

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(d) the applicant provides a waiver, in the prescribed form, from all other persons entitled to claim a drawback, refund or remission of the duties, waiving their right to do so.

GOODS AND MATERIALS OF THE SAME CLASS

- **8.** For the purposes of paragraphs 82(1)(d) and (e) of the Act, domestic and imported goods and materials shall be considered to be of the same class if the goods or materials are so similar that they may be interchangeably
 - (a) used in, wrought into, or attached to the goods manufactured or produced in Canada, in the case of goods; or
 - (b) directly consumed or expended in the manufacture or production of the goods manufactured or produced in Canada, in the case of materials.

REDUCTION IN RESPECT OF A BY-PRODUCT OR MERCHANTABLE SCRAP OR WASTE

- 9. (1) Where a drawback of duties paid in respect of goods or materials is granted and the goods or materials or, in the case of imported goods or materials referred to in paragraph 3(c) or (d), the same quantity of domestic or imported goods or materials of the same class enter into a process of manufacture or production that results in a by-product, the amount of the drawback shall be reduced by the same proportion that the value of the by-product is of the total value of the products that result from the processing of the goods or materials.
- (2) Where a drawback of duties paid in respect of goods or materials is granted and the goods or materials or, in the case of imported goods or materials referred to in paragraph 3(c) or (d), the same quantity of domestic or imported goods or materials of the same class enter into a process of manufacture or production that results in merchantable scrap or waste, the amount of the drawback shall be reduced by the amount obtained by applying to the value of the merchantable scrap or waste the lesser of
 - (a) the rate of duties that applies, at the time the merchantable scrap or waste results from the process, to merchantable scrap or waste of the same kind; and
 - (b) the rate of duties paid in respect of the goods or materials.

MOTOR VEHICLES EXPORTED DRAWBACK REGULATIONS

SOR/86-950, as am. SOR/90-470.

Regulations respecting the drawback of duties paid on imported new motor vehicles, or on imported goods and materials where they, or the same quantity of domestic or imported goods and materials of the same class, are used or consumed in the manufacture or production in Canada of new motor vehicles, used temporarily in Canada and subsequently exported

SHORT TITLE

1. These Regulations may be cited as the Motor Vehicles Exported Drawback Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".-- "Act" means the Customs Act;
- "motor vehicle".—"motor vehicle" means an automobile, motorcycle, motor bicycle, truck, motor bus or motor home, but does not include any truck that has a gross vehicle mass in excess of 4.5359 tonnes;
- "non-resident".—"non-resident" means a person who makes his home and is ordinarily present in a place outside Canada;
- "purchaser".—"purchaser" means a person who purchases a motor vehicle;
- "value".—"value" means, in respect of a product, including a by-product and a motor vehicle manufactured or produced in Canada, or of merchantable scrap and waste,
 - (a) where the manufacturer or producer has sold the product or merchantable scrap or waste in an arm's length transaction, the price thereof, or
 - (b) in any other case, the price at which the manufacturer or producer would ordinarily have sold the product or merchantable scrap or waste in an arm's length transaction at the time the application for a drawback is filed at a customs office.

APPLICATION

- **3.** These Regulations apply to the grant, under subsection 82(1) of the Act and in the circumstances prescribed in section 6, of a drawback of duties paid in respect of
 - (a) an imported motor vehicle subsequently exported,
 - (b) imported goods used in, wrought into or attached to a motor vehicle manufactured or produced in Canada and subsequently exported,
 - (c) imported materials, other than fuel or plant equipment, directly consumed or expended in the manufacture or production in Canada of a motor vehicle subsequently exported,
 - (d) imported goods, where the same quantity of domestic or imported goods of the same

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class is used in, wrought into or attached to a motor vehicle manufactured or produced in Canada and subsequently exported, or

(e) imported materials, other than fuel or plant equipment, where the same quantity of domestic or imported materials of the same class is directly consumed or expended in the manufacture or production in Canada of a motor vehicle subsequently exported,

where, prior to its exportation, the motor vehicle is sold to a purchaser in Canada and it is, at the time of the sale, new.

PERSON WHO MAY CLAIM

- 4. A drawback may only be claimed by
- (a) the importer of the motor vehicle or the person who sold the motor vehicle to the purchaser, in the case of an imported motor vehicle; or
- (b) the manufacturer or producer of the motor vehicle, in the case of a motor vehicle manufactured or produced in Canada.

APPLICATION FOR DRAWBACK

5. An application for a drawback shall be presented at a customs office or sent by registered mail to a customs office, in the prescribed form, within four years after the duties were paid. SOR/90-470.

CIRCUMSTANCES AND CONDITIONS

- 6. A drawback may only be granted if
- (a) the motor vehicle is exported by the purchaser
 - (i) where the purchaser is a resident of Canada, within 30 days after the date of its delivery to the purchaser, or
 - (ii) where the purchaser is a non-resident, within 12 months after the date of its delivery to the purchaser;
- (b) prior to exportation, the motor vehicle remains in the ownership of the purchaser and is not used while in Canada
 - (i) by any person other than the purchaser,
 - (ii) for carrying passengers or goods for compensation or for the transport of goods for sale, or
 - (iii) for soliciting sales or subscriptions on behalf of a Canadian business;
- (c) the motor vehicle was exported before the application is filed;
- (d) in the case of imported goods or materials referred to in paragraph 3(d) or (e), the goods or materials were, during the twelve months immediately preceding the date of the commencement of the manufacture or production of the motor vehicle, used or consumed in the same plant in Canada in which domestic or imported goods or materials of the same class were used or consumed in the manufacture or production of the motor vehicle; and
- (e) the applicant provides a waiver, in the prescribed form, from the other persons entitled to claim a drawback, refund or remission of the duties, waiving their right to do so.

GOODS AND MATERIALS OF THE SAME CLASS

- 7. For the purposes of paragraphs 82(1)(d) and (e) of the Act, domestic and imported goods and materials shall be considered to be of the same class if the goods or materials are so similar that they may be interchangeably
 - (a) used in, wrought into or attached to the motor vehicle manufactured or produced in Canada and subsequently exported, in the case of goods; or
 - (d) directly consumed or expended in the manufacture or production of the motor vehicle manufactured or produced in Canada and subsequently exported, in the case of materials.

REDUCTION IN RESPECT OF A BY-PRODUCT OR MERCHANTABLE SCRAP OR WASTE

- **8.** (1) Where a drawback of duties paid in respect of goods or materials is granted and the goods or materials or, in the case of imported goods or materials referred to in paragraph 3(d) or (e), the same quantity of domestic or imported goods or materials of the same class enter into a process of manufacture or production that results in a by-product, the amount of the drawback shall be reduced by the same proportion that the value of the by-product is of the total value of the products that result from the processing of the goods or materials.
- (2) Where a drawback of duties paid in respect of goods or materials is granted and the goods or materials or, in the case of imported goods or materials referred to in paragraph 3(d) or (e), the same quantity of domestic or imported goods or materials of the same class enter into a process of manufacture or production that results in merchantable scrap or waste, the amount of the drawback shall be reduced by the amount obtained by applying to the value of the merchantable scrap or waste the lesser of
 - (a) the rate of duties that applies, at the time the merchantable scrap or waste results from the process, to merchantable scrap or waste of the same kind; and
 - (b) the rate of duties paid in respect of the goods or materials.

OFFICERS AUTHORIZED TO EXERCISE POWERS OR PERFORM DUTIES OF THE MINISTER OF NATIONAL REVENUE REGULATIONS

SOR/86-1066, as am. SOR/89-65; SOR/93-558.

Regulations authorizing a designated officer or class of officers to exercise powers or perform duties of the minister of national revenue under the Customs Act

SHORT TITLE

1. These Regulations may be cited as the *Officers Authorized to Exercise Powers or Perform Duties of the Minister of National Revenue Regulations*.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act;
- "chief officer of customs".—"chief officer of customs", with respect to an area or place, means the manager of the customs office or customs offices that serve that area or place;
- "region".—"region" means any of the following regions for which there is a regional office of the Department of National Revenue (Customs and Excise), namely,
 - (a) Atlantic,
 - (b) Ouebec.
 - (c) Montreal,
 - (d) Ottawa.
 - (e) Toronto.
 - (f) Hamilton.
 - (g) Southwestern Ontario,
 - (h) Central.
 - (i) Alberta,
 - (i) Pacific:

DELEGATION OF THE POWERS AND DUTIES OF THE MINISTER

- **3.** An officer holding the position of Deputy Minister of National Revenue for Customs and Excise, or a person authorized to perform the duties of that position, may exercise all the powers and perform all the duties of the Minister under the Act, other than those powers and duties described in subsections 9(1) and (2), paragraphs 9(5)(h) and 24(1)(c), subsection 51(3), sections 59 and 105, subsections 106(3) and 109(1) and sections 134, 149 and 165 of the Act.
- **4.** An officer holding a position of assistant deputy minister of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position,

[&]quot;regional collector" means the manager of the customs offices within a region.

may exercise all the powers and perform all the duties of the Minister under the Act, other than those powers and duties described in subsections 9(1) and (2), paragraphs 9(5)(h) and 24(1)(c), subsection 51(3), sections 59 and 105, subsections 106(3) and 109(1) and sections 134, 149 and 165 of the Act.

- 5. An officer holding the position of Director General, Commercial Operations Directorate, Customs Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under section 8, paragraph 9(5)(e), subsections 10(1), 12(6) and 22(2), paragraphs 24(1)(a) and (b), subsections 24(2), 32(2), 35.02(3), 37(2), 40(1) and (2) and 43(1), paragraphs 61(e), 63(1)(b) and 64(a) and (a.1), subsections 95(4), 97.2(1) and 99(4), paragraphs 142(1)(a) and (b), section 147 and subsection 166(2) of the Act. SOR/89-65; SOR/93-558.
- **6.** An officer holding the position of Director General, Travellers and Enforcement Directorate, Customs Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under section 5 and subsections 57.2(2.1) and 97.2(2) of the Act. SOR/89-65; SOR/93-558.
- 7. An officer holding the position of Director General, Tariff Programs Division, Customs Programs Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under section 8, subsections 35.02(3), 40(2), 42.3(3), 42.4(2), 43(1) and 57.2(2.1), paragraphs 60(1)(b), 61(e), 63(1)(b) and 64(a) and (a.1), subsections 74(1), 76(1) and 77(1) and (3), section 79, subsections 82(1) and (4), section 86, subsections 88(2), 97.2(2) and 99(4), section 147 and subsection 166(2) of the Act. SOR/89-65; SOR/93-558.
- **8.** An officer holding the position of Director General, Assessment Programs Division, Customs Programs Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under section 8, subsections 40(2) and 43(1), paragraphs 60(1)(b), 61(e), 63(1)(b) and 64(a), subsections 77(3) and 97.2(2), section 120, subsections 124(3) and (4), section 147 and subsection 166(2) of the Act. SOR/89-65.

9. [Revoked SOR/89-65]

- **10.** An officer holding a position of regional collector, Customs Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under section 5, paragraphs 6(2)(a) and (b) and 24(1)(a) and (b), subsections 24(2), 37(1) and (2), 40(1) and (2), 43(1) and 97.2(1) and (2), paragraphs 142(1)(a) and (b), subsections 145(1) and 146(2) and section 147 of the Act, SOR/89-65.
- 11. An officer holding the position of Director, Entry, Postal and Appraisal Division, Customs Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under section 8, paragraph 9(5)(e), subsections 10(1), 12(6), 32(2), 37(2), 40(1), 95(4), 97.2(1) and 99(4), paragraphs 142(1)(a) and (b) and subsection 166(2) of the Act. SOR/89-65.
- 12. An officer holding the position of Director, Commercial Traffic Control Directorate, Customs Programs Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under section 8, subsections 12(6) and 22(2), paragraph 24(1)(a) and

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(b), subsections 24(2), 37(2) and 95(4), paragraphs 142(1)(a) and (b) and subsection 166(2) of the Act.

- 13. An officer holding the position of Director, Cargo and Release Division, Customs Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under section 8, subsection 37(2), paragraphs 63(1)(b) and 64(a), subsections 97.2(2) and 99(4), paragraphs 142(1)(s) and (b) and subsection 166(2) of the Act. SQR/89-65.
- 13.1 An officer holding the position of Director, Inspection and Control Division, Commercial Operations Directorate, Customs Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under subsection 35.02(3) and paragraphs 61(e), 63(1)(b) and 64(a.1) of the Act. SOR/93-558.
- 14. An officer holding the position of director, Travellers Division, Customs Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under section 8, subsections 12(6), 37(2) and 57.2(2.1), paragraphs 63(1)(b) and 64(a), subsection 95(4) and paragraphs 142(1)(a) and (b) of the Act. SOR/89-65; SOR/93-558.

15. [Revoked SOR/89-65]

- **16.** An officer holding a position of director, Tariff Programs Division, Customs Programs Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under section 8, subsections 42.3(3), 42.4(2), 43(1) and 57.2(2.1), paragraphs 60(1)(b), 61(e), 63(1)(b) and 64(a) and (a.1), subsections 74(1), 76(1) and 77(1) and (3), section 79, subsections 82(1) and (4), section 86 and subsections 88(2), 97.2(1), 99(4) and 166(2) of the Act. SOR/89-65; SOR/93-558.
- 17. An officer holding the position of director, Tariff Policy and Systems Development Directorate, Customs Programs Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under section 147 of the Act.
- 18. An officer holding a position of director, Assessment Programs Division, Customs Programs Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under section 8, subsection 43(1), paragraphs 60(1)(b), 61(e), 63(1)(b) and 64(a), subsections 77(3) and 97.2(2), section 120 and subsections 124(3) and (4) and 166(2) of the Act. SOR/89-65; SOR/93-558.
- 19. An officer holding the position of Director, Adjudications Division, Customs Programs Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under section 8, subsection 43(1), paragraphs 142(1)(a) and (b) and 143(3)(b), subsection 146(2), section 147 and subsection 166(2) of the Act.
- **20.** An officer holding the position of Director, Investigations Division, Customs Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under subsections 43(1) and 97.2(2), section 120 and subsections 124(3) and (4) of the Act. SOR/89-65.

- **21.** An officer holding the position of Director, Field Liaison Division, Field Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under sections 5 and 8 of the Act.
- 22. An officer holding the position of Director, Laboratory and Scientific Services Directorate, Corporate Management Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under subsection 99(4) of the Act.
- 23. An officer holding the position of Director, Finance Directorate, Corporate Management Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under section 8, paragraph 58(2)(a), subsection 60(1), paragraphs 62(1)(a) and 65(1)(a), subsection 69(1), paragraphs 117(b), 118(b), 119(1)(b) and 143(3)(b), section 147 and subsection 166(2) of the Act.
- 24. An officer holding the position of Manager, Policy Review and Systems, Tariff Policy and Systems Development Directorate, Customs Programs Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under section 147 of the Act.
- 25. An officer holding a position of manager of an operational services division, Customs Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under section 5, paragraphs 24(1)(a) and (b), and subsections 24(2), 37(1) and (2), 40(1) and (2) and 97.2(1) of the Act. SOR/89-65.
- **26.** An officer holding a position of manager of an investigations division, Customs Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under subsections 43(1) and 97.2(2), section 120 and subsections 124(3) and (4) of the Act. SOR/89-65.
- 27. An officer holding a position of manager of a customs assessment division, Customs Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under subsections 42.3(3), 42.4(2), 43(1) and 57.2(2.1), paragraphs 60(1)(b), 61(e), 63(1)(b) and 64(a), subsections 74(1), 76(1) and 77(1) and (3), section 79, subsections 82(1) and (4), sections 86 and subsections 88(2) and 99(4) of the Act. SOR/89-65; SOR/93-558.
- **28.** An officer holding a position of manager of a tariff programs and appraisal division, Customs Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under subsection 57.2(2.1), paragraphs 60(1)(b), 61(d) and 64(a), and subsections 77(1) and (3), 88(2) and 99(4) of the Act. SOR/89-65; SOR/93-558.
- 29. An officer holding a position of manager of a drawbacks, refunds and remissions division, Field Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under subsections 74(1) and 76(1), section 79, subsections 82(1) and (4) and section 86 of the Act.
 - 29.1 An officer holding the position of Manager, Drawback and Refund Policy Unit,

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Tariff Programs Division, Customs Programs Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under paragraphs 74(1)(a), (b), (c) and (c.2) and subsections 76(1) and 82(1) of the Act. SOR/93-558.

- **29.2** An officer holding the position of Manager, Origin Determination Directorate, Customs Programs Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under subsections 42.3(3) and 42.4(2) and paragraphs 63(e), 63(1)(b) and 64(a) of the Act. SOR/93-558.
- **30.** An officer holding the position of Chief, Warehouse Control, Commercial Traffic Control Directorate, Customs Programs Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under paragraph 24(1)(a) and subsection 24(2) of the Act.
- **31.** An officer holding a position of chief, Investigations Division, Field Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under section 120 and subsections 124(3) and (4) of the Act.
- 32. An officer authorized to supervise the officers of a customs assessment division, Customs Operations Branch of the Department of National Revenue, Customs and Excise, may exercise the powers and perform the duties of the Minister under subsections 42.3(3), 42.4(2) and 57.2(2.1), paragraphs 60(1)(b) and 61(e) and subsections 74(1), 76(1), 77(1) and (3), 82(1), 88(2) and 99(4) of the Act.
- **32.1** An officer authorized to supervise the officers of a tariff programs and appraisal division, Customs Operations Branch of the Department of National Revenue, Customs and Excise, may exercise the powers and perform the duties of the Minister under subsections 57.2(3) and (4), paragraphs 60(1)(b) and 61(e), and subsections 77(1) and (3), 88(2) and 99(4) of the Act. SOR/89-65; SOR/93-558.
- **33.** An officer authorized to supervise the officers of a customs assessment division or a drawback, refunds and remissions division, Field Operations Branch of the Department of National Revenue, Customs and Excise, may exercise the powers and perform the duties of the Minister under subsections 74(1) and 76(1), section 79, subsections 82(1) and (4) and section 86 of the Act.
- **34.** An officer authorized to perform the duties of a chief officer of customs, Field Operations Branch of the Department of National Revenue, Customs and Excise, may exercise the powers and perform the duties of the Minister under section 5, paragraphs 6(2)(b) and 24(1)(b), subsections 24(2), 37(1) and (2), sections 73 and 120, subsections 124(3) and (4) and 142(1)(a) and (b) of the Act.
- **35.** An officer holding a position of tariff and values administrator in a customs assessment division, Customs Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under subsections 42.3(3), 42.4(2) and 57.2(2.1), paragraphs 60(1)(b), 61(e) and 74(1)(c.1) and (c.2), subsections 77(1) and (3), 88(2) and 99(4), section 120 and subsections 124(3) and (4) of the Act. SOR/89-65; SOR/93-558.
- 36. An officer holding a position of drawback specialist in a customs assessment division or a drawbacks, refunds and remissions division, Field Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that

position, may exercise the powers and perform the duties of the Minister under subsections 74(1), 76(1) and 82(1) and (4) and section 86 of the Act.

- 36.1 An officer holding a position of drawback and refund policy officer, Tariff Programs Division, Customs Programs Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under paragraphs 74(1)(a), (b), (c) and (c.2) and subsections 76(1) and 82(1) of the Act. SOR/93-558.
- 36.2 An officer holding a position of duties relief administrator in a customs assessment division, Customs Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under paragraphs 74(1)(a), (b), (c) and (c.2) and subsections 76(1) and 82(1) of the Act. SOR/93-558.
- **36.3** An officer holding a position in the Valuation Division, Customs Programs Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under paragraphs 60(1)(b) and 63(1)(b) of the Act. SOR/93-558.
- **36.4** An officer holding a position in the Tariff Programs Division, Customs Programs Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under paragraphs 63(1)(b) of the Act. SOR/93-558.
- 37. An officer holding a position of drawback investigator in a customs assessment division or a drawbacks, refunds and remissions division, Field Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under subsections 74(1), 76(1) and 82(1) and (4) and section 86 of the Act.
- **38.** An officer holding a position of investigator in an investigations division, Field Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under section 120 and subsections 124(3) and (4) of the Act.
- **38.1** An officer holding a position in the Origin Determination Directorate, Customs Programs Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under subsections 42.3(3) and 42.4(2) of the Act. SOR/93-558.
- **39.** An officer holding the position of Special Procedures Officer, Tariff Policy and Systems Development Directorate, Customs Programs Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under section 147 of the Act.
- **40.** An officer holding a position of commodity specialist in a customs assessment division, Customs Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under subsection 42.4(2), section 73, paragraphs 74(1)(c.1) and (c.2), subsection 99(4), section 120 and subsections 124(3) and (4) of the Act. SOR/93-558.
- **41.** An officer holding a position of a customs inspector, Field Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the

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duties of that position, may exercise the powers and perform the duties of the Minister under sections 73 and 120 and subsections 124(3) and (4) of the Act.

- **42.** An officer authorized to grant refunds on behalf of a customs assessment division or a drawbacks, refunds and remissions division, Field Operations Branch of the Department of National Revenue, Customs and Excise, may exercise the powers and perform the duties of the Minister under subsections 74(1) and 76(1) of the Act.
- **43.** An officer holding a position of refund clerk in a customs assessment division, Customs Operations Branch of the Department of National Revenue, Customs and Excise, or a person authorized to perform the duties of that position, may exercise the powers and perform the duties of the Minister under paragraphs 74(1)(a), (b), (c) and (c.2) of the Act. SOR/93-558.

PRESENTATION OF PERSONS (CUSTOMS) REGULATIONS

SOR/86-870, as am. SOR/87-572; SOR/92-83 (French only).

Regulations respecting the presentation of persons at a Customs Office on arrival in Canada

SHORT TITLE

1. These Regulations may be cited as the Presentation of Persons (Customs) Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act;
- "designated customs office".—"designated customs office" means a customs office designated under section 5 of the Act as a customs office where a person may present himself pursuant to section 11 of the Act;
- "designated holding area".—"designated holding area" means any room or other area designated by the Deputy Minister for the use of persons arriving in Canada who are in transit to another place in Canada or to a place outside Canada.

EXCEPTIONS TO SUBSECTION 11(1) OF THE ACT

- 3. The following persons arriving in Canada are, in the following circumstances and subject to the conditions specified, exempt from the requirement set out in subsection 11(1) of the Act that they present themselves forthwith at the nearest designated customs office that is open for business,
 - (a) any person arriving in Canada aboard a commercial passenger conveyance who does not disembark in Canada and who has as his destination a place outside Canada;
 - (b) any person arriving in Canada aboard a commercial passenger conveyance who does not disembark at the place of arrival in Canada and who has as his destination another place in Canada at which there is a designated customs office, on condition that on arrival at his destination he present himself forthwith at that customs office or, if it is not open for business, at the nearest designated customs office that is open for business and answer truthfully any questions asked by an officer in accordance with subsection 11(1) of the Act:
 - (c) any person arriving in Canada aboard a commercial passenger conveyance who is transferred under customs control to another commercial passenger conveyance for departure to a place outside Canada or to another place in Canada at which there is a designated customs office, on condition that
 - (i) if the person is transferred first to a designated holding area, the person does not leave the designated holding area other than to board that other commercial passenger conveyance for departure to his destination, and
 - (ii) if the person has as his destination another place in Canada at which there is a designated customs office, on arrival at his destination he present himself forthwith at that customs office or, if it is not open for business, at the nearest designated customs

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office that is open for business and answer truthfully any questions asked by an officer in accordance with subsection 11(1) of the Act; and

(d) any person arriving in Canada aboard a non-commercial passenger conveyance at a place that has been designated as a customs office where reporting may be made by radio or telephone, on condition that the person report his arrival to an officer by radio or telephone and, if required to do so by the officer, present himself at the time and place specified by the officer and answer truthfully any questions asked by an officer in accordance with subsection 11(1) of the Act. SOR/87-572.

EXCEPTIONS TO SUBSECTION 11(3) OF THE ACT

- **4.** Any person in charge of a commercial passenger conveyance arriving in Canada is, in the following circumstances and subject to the conditions specified, exempt from the requirement set out in subsection 11(3) of the Act:
 - (a) in respect of passengers and crew who do not disembark in Canada and who have as their destination a place outside Canada, on condition that no passengers or goods, other than those coming from a designated holding area, are taken on board the conveyance while it is in Canada;
 - (b) in respect of passengers and crew who do not disembark at the place of arrival in Canada and who have as their destination another place in Canada at which there is a designated customs office, on condition that
 - (i) no passengers or goods, other than those coming from a designated holding area, are taken on board the conveyance while it is in transit in Canada, and
 - (ii) the passengers and crew comply withe the condition set out in paragraph 3(b);
 - (c) in respect of passengers and crew who are transferred under customs control to another commercial passenger conveyance for departure to a place outside Canada or to another place in Canada at which there is a designated customs office, on condition that the passengers and crew comply with the conditions set out in subparagraphs 3(c)(i) and (ii), if applicable; and
 - (d) in respect of passengers and crew who arrive at a place that has been designated as a customs office where reporting may be made by radio or telephone, on condition that the person in charge of the commercial passenger conveyance
 - (i) report by radio or telephone the arrival of the conveyance to an officer and advise the officer of the number and names of the crew and passengers who disembark at that place, and
 - (ii) if required to do so by an officer, ensure that the passengers and crew who disembark at that place are transported to the place specified by the officer, at the time specified by the officer, for the purpose of presenting themselves and answering truthfully any questions asked by an officer in accordance with subsection 11(1) of the Act. SOR/87-572.

PROOF OF ORIGIN OF IMPORTED GOODS REGULATIONS

SOR/93-607

Regulations respecting proof of origin of imported goods

SHORT TITLE

1. These Regulations may be cited as the Proof of Origin of Imported Goods Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act;
- "casual goods".—"casual goods" means goods imported into Canada, other than commercial goods;
- "commercial goods".—"commercial goods" means goods imported into Canada for sale or for any industrial, occupational, commercial, institutional or other like use;
- "identical goods".—"identical goods" means goods that are the same in all respects, including physical characteristics, quality and reputation, except for minor differences in appearance that do not affect the determination of origin of those goods;
- "series of importations".—"series of importations" means two or more importations of goods that are accounted for separately under section 32 of the Act, but that are covered by one commercial invoice issued by the vendor of the goods to the purchaser of the goods.
- **3.** Wherever in these Regulations a reference is made to a particular tariff or tariff treatment, that reference shall be construed to mean that tariff or tariff treatment under the *Customs Tariff*.

PROOF OF ORIGIN OF GOODS FROM COUNTRIES THAT ARE BENEFICIARIES OF THE GENERAL PREFERENTIAL TARIFF, COMMONWEALTH CARIBBEAN COUNTRIES TARIFF TREATMENT OR LEAST DEVELOPED DEVELOPING COUNTRIES TARIFF TREATMENT

- **4.** (1) For the purposes of this section, "beneficiary country" means a country the goods of which have been extended the benefit of the General Preferential Tariff, Commonwealth Carribbean Countries tariff treatment or Least Developed Developing Countries tariff treatment.
- (2) Subject to subsections (3) to (5), where the benefit of the General Preferential Tariff, Commonwealth Caribbean Countries tariff treatment or Least Developed Developing Countries tariff treatment is claimed for goods, the importer or owner of the goods shall, for the purposes of section 35.1 of the Act, furnish to an officer, a proof of origin, at an applicable time prescribed by section 12 or 13, the prescribed form completed in English or French.
 - (3) Where the goods are
 - (a) of a value not exceeding \$300,
 - (b) imported in a traveller's baggage or consigned from an individual in the beneficiary country to an individual in Canada, and

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- (c) declared at the time of importation as not intended for resale,
- the importer and owner of those goods are exempt from the requirements of subsection 35.1(1) of the Act if the importer or owner furnishes to an officer, at an applicable time prescribed by section 12 or 13, a written statement, in English or French, signed by the vendor of the goods in the beneficiary country, that certifies that the goods originate in that country.
- (4) Where the benefit of the General Preferential Tariff is claimed for goods produced in the People's Republic of China and the goods are shipped from Hong Kong on a through bill of lading to a consignee in Canada, the importer and owner of those goods are exempt from the requirements of subsection 35.1(1) of the Act if the importer or owner furnishes to an officer, at an applicable time prescribed by section 12 or 13.
 - (a) the prescribed form, completed in English or French, or partially completed where all of the information provided is in English or French, and a written statement in English or French that indicates that at least 60 per cent of the ex factory price of the goods is attributable to production in the People's Republic of China; or
 - (b) any other documentation, completed in English or French, that indicates that at least 60 per cent of the ex factory price of the goods attributable to production in the People's Republic of China.
- (5) Where the benefit of the General Preferential Tariff is claimed for soluble coffee classified under tariff item No. 2101.10.11 or 2101.10.12 of Schedule I to the *Customs Tariff*, the importer and owner of the coffee are exempt from the requirements of subsection 35.1(1) of the Act if the importer or owner furnishes to an officer, at an applicable time prescribed by section 12 or 13,
 - (a) an import permit issued in respect of the coffee pursuant to the Export and Import Permits Act: or
 - (b) any other documentation, completed in English or French, that indicates that the coffee originates in the applicable country the goods of which have been extended the benefit of the General Preferential Tariff.

PROOF OF ORIGIN OF GOODS FROM COUNTRIES THAT ARE BENEFICIARIES OF THE BRITISH PREFERENTIAL TARIFF, MOST-FAVOURED-NATION TARIFF, GENERAL TARIFF, OR AUSTRALIA OR NEW ZEALAND TARIFF TREATMENT

- **5.** (1) For the purposes of this section, "beneficiary country" means a country the goods of which have been extended the benefit of the British Preferential Tariff, Most-Favoured-Nation Tariff, General Tariff or Australia or New Zealand Tariff treatment.
- (2) Subject to subsection (3), where the benefit of the British Preferential Tariff, Most-Favoured-Nation Tariff, General Tariff or Australia or New Zealand Tariff treatment is claimed for goods, the importer or owner of the goods shall, for the purposes of section 35.1 of the Act, furnish to an officer, as proof of origin, at an applicable time prescribed by section 12 or 13, the prescribed form, completed in English or French by the vendor or the transferee in the country of export.
- (3) The importer and owner of the goods are exempt from the requirements of subsection 35.1(1) of the Act if the importer or owner furnishes to an officer, at an applicable time prescribed by section 12 or 13,
 - (a) a Canada Customs invoice, completed in English or French by the importer or owner that indicates that the goods originate in the applicable beneficiary country;

- (b) where the Canada Customs invoice does not indicate that the goods originate in the applicable beneficiary country, a commercial invoice, completed in English or French by the vendor or the transferee in the country of export, that indicates that the goods originate in the applicable beneficiary country; or
- (c) any other documentation, completed in English or French, that indicates that the goods originate in the applicable beneficiary country.

PROOF OF ORIGIN OF GOODS IMPORTED BEFORE JANUARY 1, 1994, BUT FOR WHICH A CLAIM FOR THE BENEFIT OF THE UNITED STATES TARIFF IS MADE ON OR AFTER JANUARY 1, 1994

- **6.** (1) Subject to subsections (2) and (3), where the benefit of the United States Tariff is claimed, on or after January 1, 1994, for goods imported before January 1, 1994, the importer or owner of the goods shall, for the purposes of section 35.1 of the Act, furnish to an officer, as proof of origin, at an applicable time prescribed by section 12, the prescribed form completed in English or French.
- (2) The importer and owner of the goods are exempt from the requirements of subsection 35.1(1) of the Act if the importer or owner furnishes to an officer, at an applicable time prescribed by section 12, a written and signed declaration, in English or French, that certifies that the goods originate in the United States and that the completed form referred to in subsection (1) is in the importer's possession.
- (3) Where the benefit of the United States Tariff is claimed on or after January 1, 1994 for casual goods acquired in the United States and imported before January 1, 1994, the importer and owner of the casual goods are exempt from the requirements of subsection 35.1(1) of the Act if the casual goods are entitled to the benefit of the United States Tariff pursuant to the NAFTA Rules of Origin for Casual Goods Regulations.

PROOF OF ORIGIN OF GOODS IMPORTED ON OR AFTER JANUARY 1, 1994, THAT ARE ENTITLED TO THE BENEFIT OF PREFERENTIAL TARIFF TREATMENT UNDER NAFTA

- 7. (1) Subject to subsections (2), (3) and (4), where the benefit of preferential tariff treatment under NAFTA is claimed for goods imported on or after January 1, 1994, the importer or owner of the goods shall, for the purposes of section 35.1 of the Act, furnish to an officer, as proof of origin, at an applicable time prescribed by section 13, a Certificate of Origin for the goods, completed in English, French or Spanish.
- (2) The importer and owner of the goods are exempt from the requirements of subsection 35.1(1) of the Act if the importer or owner furnishes to an officer, at an applicable time prescribed by section 13, a written and signed declaration, in English or French, that certifies that the goods originate in the applicable NAFTA country and that the completed Certificate of Origin referred to in subsection (1) is in the importer's possession.
- (3) Where the benefit of preferential tariff treatment under NAFTA is claimed for casual goods acquired in a NAFTA country, the importer and owner of the casual goods are exempt from the requirements of subsection 35.1(1) of the Act if the casual goods are entitled to preferential tariff treatment under NAFTA pursuant to the NAFTA Rules of Origin for Casual Goods Regulations.
- (4) Where the benefit of preferential tariff treatment under NAFTA is claimed for commercial goods that have an estimated value for duty of less than \$1,600, the importer and

owner of the commercial goods are exempt from the requirements of subsection 35.1(1) of the Act if

- (a) the commercial goods do not form part of a series of importations that is undertaken or arranged for the purpose of avoiding the requirements of subsection 35.1(1) of the Act; and
- (b) the importer or owner of the commercial goods furnishes to an officer, at an applicable time prescribed by section 13,
 - (i) a commercial invoice for the commercial goods, containing a written and signed statement, in English or French, from the exporter or producer of the commercial goods, that certifies that the commercial goods originate in the applicable NAFTA country, or
 - (ii) a written and signed statement, in English or French, from the exporter or producer of the commercial goods, that certifies that the commercial goods originate in the applicable NAFTA country.
- **8.** (1) An exporter or producer of goods in a NAFTA country other than Canada who has completed and signed a Certificate of Origin for the goods and who requests a re-determination of origin under subsection 60(1) of the Act, as applied by subsection 57.2(3.1) of the Act, is authorized to furnish proof of origin of goods under subsection 35.1(1) of the Act in lieu of the importer or owner of the goods.
- (2) An exporter or producer of goods who furnishes proof of origin of goods shall furnish to an officer, as proof of origin, at the time prescribed by paragraph 13(f), a copy of the Certificate of Origin, completed and signed by the exporter of the goods.
- **9.** Where a Certificate of Origin for goods is completed in Spanish, the importer or owner of the goods, or an exporter or producer referred to in subsection 8(2), shall, at the request of an officer, furnish to the officer a translation of the Certificate of Origin in English or French.
 - 10. A Certificate of Origin may be applicable to
 - (a) a single importation of a good; or
 - (b) two or more importations of identical goods, imported by the same importer, that occur within a period not exceeded 12 months, as set out in the Certificate of Origin by the person signing it.
- 11. A Certificate of Origin may be accepted as proof of origin for four years after the date on which it was signed.

TIME

- 12. Proof of origin for goods imported before January 1, 1994 shall be furnished at one of the following times:
 - (a) at the time the goods are released;
 - (b) at any time the goods are accounted for under section 32 of the Act;
 - (c) within two years after the goods are accounted for under subsections 32(1), (3) or (5) of the Act, where a claim for a refund in respect of the goods has been made under section 74 of the Act;
 - (d) at any time before a determination is made under subsection 57.2(1) of the Act or is deemed to have been made under subsection 57.2(2) of the Act is respect of the goods, where the goods have been accounted for under subsections 32(1), (3) or (5) of the Act and

have been extended the benefit of a tariff or tariff treatment other than the United States Tariff: or

- (e) at the time a request for a re-determination or a further re-determination of the origin of goods imported from the United States is made under section 60 or 63 of the Act, as applied by subsection 57.2(3.1) of the Act, where the goods have been accounted for under subsections 32(1), (3) or (5) of the Act and have been extended the benefit of a tariff or tariff treatment other than the United States Tariff.
- 13. Proof of origin for goods imported on or after January 1, 1994 shall be furnished at one of the following times:
 - (a) at the time the goods are released;
 - (b) at any time the goods are accounted for under section 32 of the Act;
 - (c) within one year after the goods are accounted for under subsections 32(1), (3) or (5) of the Act, where an application for a refund in respect of the goods has been made under paragraph 74(1)(c.1) of the Act;
 - (d) within two years after the goods are accounted for under subsections 32(1), (3) or (5) of the Act, where an application for a refund in respect of the goods has been made under paragraph 74(1)(c.2) of the Act;
 - (e) at any time before a determination is made under subsection 57.2(1) of the Act or is deemed to have been made under subsection 57.2(2) of the Act in respect of the goods, where the goods have been accounted for under subsections 32(1), (3) or (5) of the Act and have been extended the benefit of a tariff or tariff treatment other than preferential tariff treatment under NAFTA; or
 - (f) at the time a request for a re-determination or a further re-determination of the origin of goods imported from NAFTA country is made under section 60 or 63 of the Act, as applied by subsection 57.2(3.1) of the Act, where the goods have been accounted for under subsections 32(1), (3) or (5) of the Act and have been extended the benefit of a tariff or tariff treatment other than preferential tariff treatment under NAFTA.

RE-DETERMINATION AND RE-APPRAISAL OF GOODS REGULATIONS

C.R.C. 1978, c. 474, as am. SOR/80-616; SOR/85-624.

Regulations respecting the re-determination and re-appraisal of imported goods

SHORT TITLE

1. These Regulations may be cited as the Re-Determination and Re-Appraisal of Goods Regulations.

GENERAL

- **2.** A request to a Dominion customs appraiser for a re-determination of the tariff classification or a re-appraisal of the value for duty of goods shall be made in Form B2A, correctly completed and stating the reasons and grounds for the request. SOR/80-616.
- **3.** A request in Form B2A shall be signed by the importer or his duly authorized agent and shall be delivered or mailed to the collector of customs and excise at the port of entry of the goods. SOR/80-616.
 - **4.** [Amended SOR/80-616; revoked SOR/85-624]
- **5.** The importer or his duly authorized agent shall be promptly notified of the Dominion customs appraiser's decision at the address given by him in his request.
- **6.** A request to the Deputy Minister of National Revenue for Customs and Excise for a redetermination of the tariff classification or a re-appraisal of the value for duty of goods shall be made in Form K 14D, correctly completed and stating the reasons and grounds for the request.
- **7.** A request in Form K 14D shall be signed by the importer or his duly authorized agent and shall be delivered or mailed in triplicate to the collector of customs and excise at the port of entry of the goods.
 - 8. A separate request in Form K 14D shall be made for each customs entry.
- **9.** The importer or his duly authorized agent shall be promptly notified of the Deputy Minister's decision at the address given by him in his request.

DECLARATION, FORM 4

Declaration of the impe	orter or agent of the importer preso	cribed to be made on entry of goods at
a lower rate of duty or	free for manufacturing purposes.	
I,	of (Town) (Province)	hereby certify and declare
as follows:		
1. That I am the	(Importer or agent of the impor	of the goods referred
to on this entry.		

2. That the goods referred to on this entry are for use exclusively in the manufacture of

Form 1 RE-DETERMINATION AND RE-APPRAISAL OF GOODS REGS. in the owner's factory at and such goods (Town) (Province) or parts thereof will not be used for any other purpose. (Witness) (Signature of importer or agent of importer) FORM 1 OWNER'S DECLARATION (Respecting goods actually purchased for importation into Canada.) I, do hereby declare as follows: Name of owner, agent or attorney The duly authorized agent or attorney or a member the owner of the goods described in the invoice(s) annexed hereto and signed by me; (2) That the said invoice(s) include(s) all the goods described in the Entry to which this Declaration applies and the true and only invoice(s) for all the goods imported as within stated: (3) That the said goods are properly described in the said invoice(s) and in the Entry; (4) That to the best of my knowledge and belief the said invoice(s) and every certificate and declaration accompanying such invoice were made by the person or persons by whom the same purport to have been made; (5) That the said invoice(s) exhibit(s) the real price(s) at which the said goods were actually purchased by the owner in the country from which they were exported to Canada and that there is included in that price the true value of all cartons, cases, crates, boxes and coverings of any kind and of all charges and expenses incident to placing the said goods in condition packed ready for shipment to Canada; (6) That the value for duty of the said goods as stated in the Entry is not less than the fair market value, at the time when and place from which the goods were shipped directly to Canada, of like goods when sold in the same substantially the same quantities for home consumption in the ordinary course of trade under competitive conditions to purchasers located at that place with whom the vendor deals at arm's length and who are at the same or substantially the same trade level as the importer; (7) That where like goods are not sold for home consumption in the circumstances, described in the preceding section but where the goods described in the Entry are similar to those sold for home consumption, the fair market value exhibited thereon is not less than the aggregate of (a) the cost of production of the goods imported, and (b) an amount that is the same percentage of the cost of production of the goods imported as the gross profit on the similar goods is of the cost of production of the similar goods; (8) That the value for duty of the said goods is without (a) any discount or deduction not shown, allowed and deducted on invoices covering sales for home

consumption in the country of export in the ordinary course of trade; (b) any deduction on account of any subsidy or drawback of customs duty that has been allowed by the Government of any other country, or on account of any so-called royalty, rent or charge for use of any machine or goods of any description, that the seller or proprietor does or would usually charge thereon when the same are sold or leased or rented for use in the country of export; or (c) any discount or deduction on account of the amount of consideration or money value of any special arrangement between the exporter and the importer, or between any persons interested therein, because of the exportation or intended exportation of such goods, or the right to territorial

limits for the sale or use thereof; (9) That if the value for duty of the said goods described in the Entry is other than the value thereof as above specified, such value for duty has, to the best of my knowledge and belief, been fixed and determined under the authority of the Customs Act at the value exhibited in the Entry; (10) That to the best of my knowledge and belief all goods described in the Entry as being free of duty are lawfully entitled to free entry under the existing law, and all goods entered thereon at preferential tariff rates are lawfully entitled to be so entered; (11) That all goods described in the Entry as imported for a specific purpose and therefore entered free or at a lower rate of duty than would otherwise be chargeable thereon are intended to be and will be used for such specific purpose only in the manner provided for by law; (12) That nothing has been on my part, nor to my knowledge on the part of any other person, done, concealed or suppressed whereby Her Majesty may be defrauded of any part of the duty lawfully due on the said goods; (13) That no arrangement or understanding affecting the purchase price of the said goods has been or will be made or entered into between the said importer and the exporter, or by any one on behalf of either of them other than as shown on the said invoices, either by way of discount, rebate, salary, compensation or in any other manner whatsoever.

FORM 2

DECLARATION OF CONSIGNEE IN CANADA

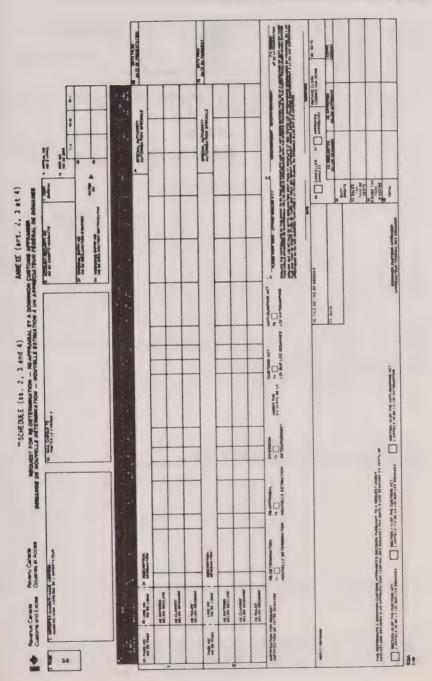
(Respecting goods that have been exported to Canada on consignment without sale by the exporter prior to shipment.)

firm of the cosignee of the goods described in the invoice(s) annexed hereto and signed by me; (2) That the said invoice(s) include(s) all the goods described in the Entry to which this Declaration applies and the true and only invoice(s) for all the goods imported as

within stated; (3) That the said goods are properly described in the said invoice(s) and in the Entry; (4) That to the best of my knowledge and belief the said invoice(s) and every certificate and declaration accompanying such invoice were made by the person or persons by whom the same purport to have been made; (5) That there is included in the said invoice(s) the true value of all cartons, cases, crates, boxes and coverings of any kind and all charges and expenses incident to placing the said goods in condition packed ready for shipment to Canada; (6) That the value for duty of the said goods as stated in the Entry is the fair market value, at the time when and place from which the goods were shipped directly to Canada, of like goods when sold in the same or substantially the same quantities for home consumption in the ordinary course of trade under competitive conditions to purchasers located at that place with whom the vendor deals at arm's length and who are at the same or substantially the same trade level as the importer; (7) That where like goods are not sold for home consumption in the circumstances described in the preceding section but where the goods described in the Entry are similar to those sold for home consumption, the fair market value exhibited thereon is not less than the aggregate of (a) the cost of production of the goods imported, and (b) an amount that is the same percentage of the cost of production of the goods imported as the gross profit on the similar goods is of the cost of production of the similar goods; (8) That the value for duty of the said goods is without (a) any discount or deduction not shown, allowed and deducted on

Form 2 RE-DETERMINATION AND RE-APPRAISAL OF GOODS REGS.

invoices covering sales for home consumption in the country of export in the ordinary course of trade; (b) any deduction on account of any subsidy or drawback of customs duty that has been allowed by the Government of any other country, or on account of any so-called royalty, rent or charge for use of any machine or goods of any description, that the seller or proprietor does or would usually charge thereon when the same are sold or leased or rented for use in the country of export; or (c) any discount or deduction on account of the amount of consideration or money value of any special arrangement between the exporter and the importer, or between any persons interested therein, because of the exportation or intended exportation of such goods, or the right to territorial limits for the sale or use thereof; (9) That if the value for duty of the said goods described in the Entry is other than the value thereof as above specified, such value for duty has, to the best of my knowledge and belief, been fixed and determined under the authority of the Customs Act at the value exhibited in the Entry; (10) That to the best of my knowledge and belief all goods described in the Entry as being free of duty are lawfully entitled to free entry under the existing law, and all goods entered thereon at preferential tariff rates are lawfully entitled to be so entered; (11) That all goods described in the Entry as imported for a specific purpose and therefore entered free or at a lower rate of duty than would otherwise be chargeable thereon are intended to be and will be used for such specific purpose only in the manner provided by law; (12) That nothing has been on my part, nor to my knowledge on the part of any other person, done, concealed or suppressed whereby Her Majesty may be defrauded of any part of the duty lawfully due on the said goods; (13) That none of the said goods has been sold by or on behalf of the owner and importer prior to their importation into Canada.



Form K14D RE-DETERMINATION AND RE-APPRAISAL OF GOODS REGS.

K 14D

TO BE PRESENTED



		POR PORT USE	
	No.		
ı			

DEPARTMENT OF NATIONAL REVENUE — CUSTOMS AND EXCISE REQUEST TO DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE FOR RE-DETERMINATION OR RE-APPRAISAL

In re the Customs Act and

MAME OF THE	PORTER
of	DRESS
Port of Entry No	Entry date
B 2 No Date	
Description of goods	
NAME AND ADDRESS	OF EXPORTER
TARIFF CLASSIFICATION	VALUE FOR DUTY
As entered	s entered
	s claimed by importer
As claimed by importer	s claimed by importer.
Dominion Customs Appraiser's decision	
Date of decision	File No.
Request is hereby made, following the decision of the Dominion Cu: re-appraisal of value for duty in respect of the above mentioned goo	
IP SPACE INSUPPLICIENT, SEPARATE N	
NAME OF IMPORTER OR AGENT ADDRE	
	PORT DATE STAMP
DATE	
A separate request in respect of each customs entry must be received the port of entry within 90 days of the date of the Dominion Cu decision.	ed by the Collector stoms: Appraiser's

REFUND OF DUTIES REGULATIONS

SOR/86-945, as am. SOR/88-85; SOR/89-66; SOR/90-294; SOR/92-413; SOR/93-135; SOR/93-550.

Regulations respecting the refund of duties on imported goods

SHORT TITLE

1. These Regulations may be cited as the Refund of Duties Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act;
- "carrier".—"carrier" means a person who transports imported goods;
- "competent authority".—"competent authority" means an official of the Government of Canada, an official of any municipal or provincial government, an insurance adjuster or a marine surveyor whose duties include the examination or inspection of goods that are the subject of a refund under these Regulations;
- "qualified appraiser".— "qualified appraiser" means a person who is qualified by virtue of his experience, business, occupation or profession to appraise goods that are the subject of a refund under these Regulations and to estimate their loss in value;
- "region".—"region" means any of the following regions for which there is a regional office of the Department of National Revenue (Customs and Excise), namely:
 - (a) Atlantic.
 - (b) Ouebec,
 - (c) Montreal,
 - (d) Ottawa.
 - (e) Toronto,
 - (f) Hamilton,(g) Southwestern Ontario.
 - (h) Central.
 - (i) Alberta.
 - (i) Pacific.

PART I—GOODS THAT HAVE SUFFERED DAMAGE, DETERIORATION OR DESTRUCTION

APPLICATION

3. This Part applies to the granting of a refund under paragraph 74(1)(a) of the Act of duties paid on goods that have suffered damage, deterioration or destruction at any time from the time of shipment to Canada to the time of release.

NOTICE

- **4.** Written notice of a claim for a refund of duties and the reasons therefor shall be given to an officer within
 - (a) three days after the release of perishable goods; and
 - (b) two years after the release of non-perishable goods. SOR/93-135.
 - 5. [Am. SOR/88-85 and SOR/92-413; revoked SOR/93-550]

EVIDENCE IN SUPPORT OF APPLICATION

- 6. An application for a refund of duties shall be supported by
- (a) a written statement by any carrier, any operator of a sufferance warehouse, bonded warehouse or duty free shop or any competent authority having knowledge of the circumstances, time and place of the damage, deterioration or destruction suffered by the goods, giving the particulars thereof or, where such a statement cannot be obtained, a written statement by a competent authority certifying that the goods suffered damage, deterioration or destruction before they were released; and
- (b) documentation in the form of
 - (i) an appraisal by a qualified appraiser verifying the loss in value of the goods as a result of the damage, deterioration or destruction of the goods,
 - (ii) a copy of any document, including a credit note from the vendor, indicating the amount granted to compensate for the damage, deterioration or destruction of the goods, or
 - (ii) a commitment of payment from the carrier or the carrier's insurers given to the importer or owner of the goods and showing the amount of compensation given for the loss in value of the goods. SOR/90-294.

AMOUNT OF REFUND

- 7. The amount of a refund of duties shall be
- (a) in the case of perishable goods or brittle goods such as crockery, china, glass and glassware, an amount equal to that proportion of the duties paid on the goods that 85 per cent of the loss in value of the goods is of the value for duty of the goods;
- (b) in the case of sugar or any saccharine product on which duty is determined according to the polarimetric test and that has suffered damage or deterioration from salt water, an amount equal to the difference between
 - (i) the duties paid on the goods, and
 - (ii) the duties that would be payable if, after the percentage of polarization of the goods is determined, there is deducted from that percentage an amount equal to five times the percentage of salt present in that portion of the water found in the damaged goods that is in excess of the water found in samples of undamaged goods, as certified in writing by an officer authorized to test such samples; and
- (c) in the case of any other goods, an amount equal to that proportion of the duties paid on the goods that the loss in value of the goods is of the value for duty of the goods.

CLASSES OF GOODS IN RESPECT OF WHICH AND CIRCUMSTANCES WHERE NO REFUNDS SHALL BE GRANTED

- 8. No refund of duties shall be granted in respect of
- (a) goods for which there is a manufacturer's or producer's recommended shelf life period or allowable storage-before-use period if the goods have suffered damage or deterioration by reason of the expiration of that period; or
- (b) iron or steel or any manufacture thereof that has suffered damage or deterioration by reason of rust.

PART II—GOODS DEFICIENT IN QUANTITY

APPLICATION

9. This Part applies to the granting of a refund under paragraph 74(1)(b) of the Act of duties paid on goods where the quantity of goods released is less than the quantity in respect of which duties were paid.

NOTICE

- **10.** Written notice of a claim for a refund of duties and the reasons therefor shall be given to an officer within two years after the release of the goods. SOR/93-135.
 - 11. [Am. SOR/88-85 and SOR/92-413; revoked SOR/93-550]

EVIDENCE IN SUPPORT OF APPLICATION

- 12. An application for a refund of duties shall be supported by
- (a) a copy of any document providing evidence of the actual quantity of the goods shipped to Canada together with a copy of any document, including a credit note from the vendor, indicating the amount granted to compensate for the value of the goods short-shipped;
 - (i) a corrected invoice from the vendor confirming the true quantity of the goods shipped to Canada, or
 - (ii) a credit note from the vendor showing the amount of credit given to the importer or owner for the quantity of goods shortshipped;
- (b) a written statement by the carrier of the goods verifying the deficiency in quantity of the goods, where the deficiency occurred because the goods were lost or went astray while in the course of transit outside Canada, and explaining the circumstances under which the goods were lost or went astray; or
- (c) a written statement by the carrier or operator of sufferance warehouse, bonded warehouse or duty free shop verifying the deficiency in quantity of the goods, where the goods were lost or stolen after the goods were reported to an officer under section 12 of the Act and while the goods were in the custody of the carrier or operator, as the case may be. SOR/90-294.

AMOUNT OF REFUND

13. The amount of a refund of duties shall be an amount equal to the difference between (a) the duties paid; and

(b) the duties payable on the quantity of goods actually released.

CLASSES OF GOODS IN RESPECT OF WHICH AND CIRCUMSTANCES WHERE NO REFUNDS SHALL BE GRANTED

14. No refund of duties shall be granted in respect of goods that were lost or stolen after they were reported under section 12 of the Act in circumstances where the carrier thereof is liable under section 20 of the Act to pay the duties thereon or an operator of a sufferance warehouse, bonded warehouse or duty free shop is liable under section 28 of the Act to pay the duties thereon.

CIRCUMSTANCES WHERE UNPAID REFUND MAY BE APPLIED TO DUTIES THAT BECOME DUE

15. In accordance with subsection 75(2) of the Act, where the quantity of imported goods released is less than the quantity in respect of which duties were paid and no refund of duties has been granted in respect of the deficient quantity, an officer may, where the goods were deficient in quantity before their arrival in Canada, at the request of the person by whom the duties were paid, apply any duties paid in respect of the deficient quantity of the goods to any duties that become due on the deficient quantity if any portion thereof is subsequently imported by the same importer or owner, on condition that the person submits to the officer a written statement as described in paragraph 12(a) or (b).

PART III—GOODS OF INFERIOR QUALITY

APPLICATION

16. This Part applies to the granting of a refund under paragraph 74(1)(c) of the Act of duties paid on goods that are of a quality inferior to that in respect of which the duties were paid.

NOTICE

- 17. Written notice of a claim for a refund of duties and the reasons therefor shall be given to an officer within
 - (a) three days after the release of perishable goods; and
 - (b) two years after the release of non-perishable goods. SOR/93-135.
 - 18. [Am. SOR/88-85 and SOR/92-413; revoked SOR/93-550]

EVIDENCE IN SUPPORT OF APPLICATION

- 19. (1) Subject to subsection (2), an application for a refund of duties shall be supported by a copy of any document, including a credit note from the vendor, indicating the amount granted to compensate for the difference between the value of the goods in respect of which duties were paid and the value of the goods of inferior quality.
- (2) Where a person who paid duties is unable to provide the document referred to in subsection (1) because of circumstances beyond the person's control and evidence of those circumstances is supplied, the application for a refund of duties shall be supported by
 - (a) a written statement of the importer indicating that the goods are of a quality inferior to

SOR/86-945 S. 21.3

that in respect of which duties were paid and identifying the respect in which the quality is inferior; and

(b) an appraisal by a qualified appraiser showing the difference between the value of the goods in respect of which duties were paid and the value of the goods of inferior quality. SOR/90-294.

AMOUNT OF REFUND

- 20. The amount of a refund of duties shall be an amount equal to the difference between
- (a) the duties paid, and
- (b) the duties payable on the value of the goods of inferior quality. SOR/90-294.

CLASSES OF GOODS IN RESPECT OF WHICH AND CIRCUMSTANCES WHERE NO REFUND SHALL BE GRANTED

- 21. No refund of duties shall be granted in respect of
- (a) goods for which there is a manufacturer's or producer's recommended shelf-life period or allowable storage-before-use period if the goods have suffered damage or deterioration by reason of the expiration of that period;
- (b) iron or steel or any manufacture thereof that has suffered damage or deterioration by reason of rust.

PART III.1—GOODS IMPORTED FROM A NAFTA COUNTRY WHERE NO CLAIM FOR PREFERENTIAL TARIFF TREATMENT UNDER NAFTA WAS MADE AT THE TIME OF ACCOUNTING

APPLICATION

21.1 This part applies to the granting of a refund under paragraph 74(1)(c.1) of the Act of duties paid on goods that were imported on or after January 1, 1994 from a NAFTA country but no claim for preferential tariff treatment under NAFTA was made in respect of those goods at the time that they were accounted for under subsection 32(1), (3) or (5) of the Act. SOR/93-550.

EVIDENCE IN SUPPORT OF APPLICATION

21.2 An application for a refund of duties shall be supported by a copy of the Certificate of Origin for the goods in respect of which the application was made. SOR/93-550.

AMOUNT OF REFUND

- 21.3 The amount of a refund fo duties shall be an amount equal to the difference between
- (a) the duties paid, and
- (b) the duties payable on the goods as a result of the goods being eligible for preferential tariff treatment under NAFTA. SOR/93-550.

PART IV—DUTIES OVERPAID OR PAID IN ERROR

APPLICATION

- 22. This Part applies to the granting of a refund under paragraph 74(1)(c.2) of the Act of duties that have been overpaid or paid in error on goods for any reason, other than an erroneous determination as to the origin of goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed, an erroneous determination of tariff classification or an erroneous appraisal of value for duty. SOR/89-66; SOR/93-550.
 - 23. [Am. SOR/88-85 and SOR/92-413; revoked SOR/93-550]

AMOUNT OF REFUND

24. The amount of a refund of duties shall be an amount equal to the duties overpaid or paid in error.

PART V—GOODS THAT ARE DEFECTIVE, ARE OF INFERIOR QUALITY OR ARE NOT THE GOODS ORDERED AND THAT HAVE BEEN DISPOSED OF OR EXPORTED

APPLICATION

25. This Part applies to the granting of a refund under subsection 76(1) of the Act of duties paid on goods that are defective, are of a quality inferior to that in respect of which duties were paid or are not the goods ordered and that have, subsequent to their importation, been disposed of in a manner acceptable to the Minister at no expense to Her Majesty in right of Canada or exported.

NOTICE

- **26.** Written notice of a claim for a refund of duties and the reasons therefor shall be given to an officer within
 - (a) three days after the release of perishable goods; and
 - (b) two years after the release of non-perishable goods.
 - 27. [Am. SOR/88-85 and SOR/92-413; revoked SOR/93-550]

EVIDENCE IN SUPPORT OF APPLICATION

- 28. An application for a refund of duties shall be supported by
- (a) a written statement by the exporter, vendor or manufacturer of the goods confirming that the goods are defective, are of a quality inferior to that in respect of which duties were paid or are not the goods ordered and identifying the nature of the defect or inferior quality or the goods that were actually ordered, as the case may be;
- (b) a copy of any document relating to a refund or credit given by the vendor of the goods to the importer or owner, showing the amount of any refund of the purchase price or of any credit given in respect of the goods;
- (c) in the case of goods of inferior quality or that are not the goods ordered, a copy of the invoice, purchase order, contract or other document that shows the goods that were actually ordered; and

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(d) a copy of the prescribed form verifying the exportation or disposal of the goods.

AMOUNT OF REFUND

29. Subject to section 30, the amount of a refund of duties shall be an amount equal to that proportion of the duties paid on the goods that the amount of the refund or credit given by the vendor is of the value for duty of the goods.

30. [Revoked SOR/90-294]

[PART VI—DIVERTED GOODS revoked SOR/93-550]

- 31. [Revoked SOR/93-550]
- 32. [Am. SOR/88-85 and SOR/92-413; revoked SOR/93-550]

PART VII—REDUCTION OF AMOUNT OF REFUND

- **33.** (1) Where merchantable scrap, waste or by-products result from the destruction or disposal of goods or the incorporation of goods into other goods in respect of which a refund of duties is to be granted under the Act, the amount of the refund shall be reduced by an amount determined by applying to the value of the merchantable scrap, waste or by-products produced the rate of duty under the *Customs Tariff* that applies on the date of production to the merchantable scrap, waste or by-products.
- (2) In this section, "value" means, in respect of merchantable scrap, waste or by-products,
 - (a) where the manufacturer or producer sold the merchantable scrap, waste or by-products in an arm's length transaction, the price thereof; or
 - (b) in any other case, the price at which the manufacturer or producer would ordinarily have sold the merchantable scrap, waste or by-products in an arm's length transaction on the date the application for a refund is made to an officer at a customs office. SOR/90-294.

REPORTING OF EXPORTED GOODS REGULATIONS

SOR/86-1001, as am. SOR/88-85; SOR/89-94.

Regulations respecting the Reporting of Exported Goods

SHORT TITLE

1. These Regulations may be cited as the Reporting of Exported Goods Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act;
- "chief officer of customs".—"chief officer of customs" with respect to an area or place, means the manager of the customs office or customs offices that serve that area or place;
- "emergency".—"emergency" means a medical emergency, fire, flood or any disaster that threatens life, property or the environment;
- "water-borne craft".—"water-borne craft" [revoked SOR/88-85]
- "vessel".—"vessel" means
 - (a) any ship, vessel, dredge, scow, yacht, boat or other water-borne craft,
 - (b) any floating submersible or semi-submersible structure such as a dock, caisson, pontoon, coffer-dam, production platform, drilling ship, drilling barge, drilling rig, jack-up drilling ship, jack-up drilling platform or other drilling platform, and
 - (c) any combination of any water-borne craft, floating submersible or semi-submersible structure whether or not self-propelled, assembled or unassembled. SOR/88-85.

MANNER OF REPORTING OF GOODS

- 3. Except as otherwise provided in these Regulations, all goods that are exported shall, prior to their exportation, be reported under section 95 of the Act in writing by the exporter, the agent of the exporter or the person transporting the goods
 - (a) in the case of exportation of goods by mail, at the post office where the goods are mailed;
 - (b) in the case of exportation of goods by vessels, at the last port of call of the vessels where a customs office is located;
 - (c) in the case of exportation of goods by aircraft, at the customs office nearest the place of departure of the aircraft; or
 - (d) in any other case, at the customs office nearest the place of exportation of the goods or at any other customs office designated for the purpose of reporting pursuant to section 5 of the Act. SOR/88-85.
- **4.** All goods that are exported by commercial vessels may be reported prior to their exportation in an interim report in writing on condition that a final report is made on or before the fourth business day following the day that the goods were exported. SOR/88-85.
 - 5. For the purposes of these Regulations, the exporter of goods shall provide to the chief

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officer of customs on or before the day of exportation any information and all certificates, licences, permits or other documents relating to the goods required to be provided under the Act or any regulations made pursuant thereto or under any other Act of Parliament or regulations made pursuant thereto that prohibit, control or regulate the exportation of goods. SOR/88-85.

ORAL REPORTING OF GOODS

- **6.** Military conveyances that are exported and that do not contain any goods or cargo may be reported orally at the customs office nearest to the place of exportation of the conveyances if the exportation of the military conveyances is not prohibited, controlled or regulated under the Act or any regulations made pursuant thereto or under any other Act of Parliament or regulations made pursuant thereto.
- **7.** Goods that are exported because of an emergency may be reported orally at the customs office nearest to the place of exportation.

MONTHLY REPORTING OF GOODS

- **8.** (1) An exporter may report any of the goods described in subsection (2) on a monthly basis if the exporter submits to the chief officer of customs
 - (a) information that is sufficient to enable the Minister to verify that the exporter will export, in the following year, the number of shipments in respect of the goods to be reported set out in paragraphs (2)(a) to (e); and
 - (b) before exporting the goods to be reported, copies of any information and all certificates, licences, permits or other documents that are required to be provided in respect of the goods by the exporter under the Act or any regulations made pursuant thereto or under any other Act of Parliament or regulations made pursuant thereto that prohibit, control or regulate the exportation of goods.
- (2) For the purpose of paragraph (1)(a), the number of shipments that an exporter will export in respect of goods to be reported on a monthly basis are as follows:
 - (a) 250 or more shipments per year of goods that have a minimum total value of \$100,000 per year;
 - (b) 250 or more shipments per year of goods that are bulk commodities;
 - (c) 250 or more shipments per year of goods that are classified as a single export commodity on condition that the goods are transported by a single mode of transportation directly to the final destination;
 - (d) 25 or more shipments per month of goods that have a minimum value of \$15,000 per month where an exporter exports on a seasonal basis; or
 - (e) one or more shipments of goods that are transported by means of a pipeline or other continuous mode of transportation. SOR/88-85.
- **9.** During a fishing season, each exportation of a commercial fishing vessel that is registered or licensed under the *Canada Shipping Act* need not be reported if the owner, master or operator of the vessel, or agent of the owner, master or operator, makes a report in writing at the time of the first exportation of the vessel during the fishing season.

EXCEPTIONS TO REPORTING

- 10. The following classes of goods may be exported without being reported if their exportation is not prohibited, controlled or regulated by the Act or regulations made pursuant thereto or under any other Act of Parliament or regulations made pursuant thereto:
 - (a) gifts, personal effects, household effects and conveyances that are not for commercial use or for resale, and that
 - (i) are exported in the possession of a person departing from Canada,
 - (ii) form part of the baggage of the person, if the person intends that the person and the baggage depart from Canada by the same conveyance, or
 - (iii) are exported by any means other than commercial aircraft or commercial vessels;
 - (b) aircraft and highway vehicles engaged in international commercial transportation service; or
 - (c) commercial goods having an estimated value of less than two thousand dollars. SOR/88-85; SOR/89-94.
- 11. Containers that have been imported may be exported without having to be reported if they were imported by a person who maintains an inventory of the containers that are in use in international commercial transportation service or by a person who leases the containers for use in international commercial transportation service if the person
 - (a) keeps records of all containers imported into Canada sufficient to enable a customs officer to verify that the containers were reported and that all duties payable thereon were paid;
 - (b) provides customs officers with access to the records of the containers referred to in paragraph (a).
- 12. Vessels used on a particular day solely or principally to transport vehicles or passengers across international waters may be reported in writing after the last trip of the day by that vessel. SOR/88-85.

REPORTING OF IMPORTED GOODS REGULATIONS

SOR/86-873, as am. SOR/87-579 (French only); SOR/88-77; SOR/92-411.

Regulations respecting the Reporting of Imported Goods

SHORT TITLE

1. These Regulations may be cited as the Reporting of Imported Goods Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act;
- "cargo container".—"cargo container" means as reusable cargo container having a length of at least 6.1 metres and an internal capacity of at least 14 cubic metres;
- "chief officer of customs".—"chief officer of customs", with respect to an area or place, means the manager of the customs office or customs offices that serve that area or place;
- "designated customs office".—"designated customs office" means a place designated under section 5 of the Act as a customs office where goods may be reported under section 12 of the Act;
- "designated holding area".—"designated holding area" means a room or other area designated by the Deputy Minister for the use of persons arriving in Canada who are in transit to another place in Canada or to a place outside Canada.
- "international commercial transportation".—"international commercial transportation" means
 - (a) any transportation resulting in, or intended to result in, the carriage of persons or goods for hire or reward, or
 - (b) any transportation of persons or goods by or on behalf of an enterprise engaged in an activity of financial return,

where the persons or goods are conveyed

- (c) from a place outside Canada to a place inside Canada,
- (d) from a place inside Canada to a place outside Canada, or
- (e) from a place outside Canada in transit through Canada to a place outside Canada;

"vessel",--"vessel" means

- (a) any ship, vessel, dredge, scow, yacht, boat or other water-borne craft,
- (b) any floating submersible or semi-submersible further such as a dock, caisson, pontoon, coffer-dam, production platform, drilling ship, drilling barge, drilling rig, jack-up drilling ship, jack-up drilling platform or other drilling platform, and
- (c) any combination of any water-borne craft, floating submersible or semi-submersible structure whether or not self-propelled, assembled or unassembled. SOR/88-77.

REPORTING OF GOODS

3. Except as otherwise provided in these Regulations, all goods that are imported shall be reported under section 12 of the Act forthwith in writing at the nearest designated customs office that is open for business.

MAIL

4. [Revoked SOR/92-411]

MANNER OF REPORTING

- **5.** (1) Subject to subsections (2) and (3), the following goods may be reported orally unless an officer requires the importer of the goods to report the goods in writing:
 - (a) goods in the actual possession of a person arriving in Canada, or that form part of his baggage where the person and his baggage are being carried on board the same conveyance;
 - (b) subject to paragraph (c), foreign based conveyances engaged in international commercial transportation other than
 - (i) railway rolling stock and locomotives, and
 - (ii) vessels;
 - (c) foreign based cargo containers engaged in international commercial transportation that are imported
 - (i) under the control of a person who maintains an inventory of the containers that are used in international commercial transportation where the person
 - (A) keeps records of all containers imported into Canada that would enable a customs officer to verify that the containers were not used in Canadian domestic service or that, if they were used in Canadian domestic service, all applicable duties thereon were paid, and
 - (B) permits the customs officer access to the records of the containers referred to in clause (A), or
 - (ii) by a person who leases containers for use in international commercial transportation where the person
 - (A) keeps records of all containers imported into Canada that would enable a customs officer to verify that the containers were not used in Canadian domestic service or that, if they were used in Canadian domestic service, all applicable duties thereon were paid, and
 - (B) permits the customs officer access to the records of the containers referred to in clause (A); and
 - (d) Canadian-based highway vehicles, aircraft and cargo containers that are built in Canada or duties paid and qualify for entry at free rates of customs into Canada as Canadian goods returned under the provisions of tariff item No. 9813.00.00 or 9814.00.00 of the *Customs Tariff*.
- (2) Goods classified under tariff item No. 9804.20.00 of the *Customs Tariff* shall be reported in writing.

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(3) Goods that are imported by a person arriving in Canada on board a commercial passenger conveyance other than a bus shall be reported in writing, SOR/88-77.

EXCEPTIONS TO REPORTING AT THE NEAREST CUSTOMS OFFICE

- **6.** Goods transported by an air transportation company that is authorized to transport the goods within Canada under the *Transportation of Goods Regulations* may be reported at the customs office for the airport of destination shown on the air waybill, on condition that the air transportation company
 - (a) keeps records on all imported goods that are transported by it into Canada sufficient to enable an officer to verify that the goods were reported and that all duties payable thereon were paid or, if the duties were not paid, to verify that the goods were destroyed, lost, received, exported or released as set out in paragraph 18(2)(a), (c), (d) (e) or (f) of the Act, as the case may be;
 - (b) keeps records on all goods that are reported by it but that are not imported sufficient to enable an officer to verify that the goods were lost or destroyed or did not leave the place outside Canada from which they were to have been exported as set out in paragraph 18(2)(a) or (b) of the Act, as the case may be; and
 - (c) where an officer so requests, makes the records referred to in paragraphs (a) and (b) available to the officer for inspection.
- 7. (1) Goods in the actual possession of a person arriving in Canada aboard a commercial passenger conveyance who has as his destination a place outside Canada, and any goods being carried on board the same conveyance and forming part of his baggage, do not have to be reported, on condition that
 - (a) the person does not disembark from the conveyance in Canada and the goods are not removed from the conveyance in Canada other than to be transferred under customs control directly to another commercial passenger conveyance for departure to a place outside Canada or directly to a designated holding area; and
 - (b) where the person and goods are transferred under customs control directly to a designated holding area, the person does not leave and the goods are not removed from that designated holding area other than to board or to be loaded on board a commercial passenger conveyance for departure to a place outside Canada.
- (2) Goods in the actual possession of a person arriving in Canada aboard a commercial passenger conveyance who has as his destination another place in Canada at which there is a designated customs office, and any goods being carried on board the same conveyance and forming part of his baggage, may be reported at that designated customs office on condition that
 - (a) the person does not disembark from the conveyance at the place of arrival in Canada and the goods are not removed from the conveyance at the place of arrival in Canada other than to be transferred under customs control directly to another commercial passenger conveyance for departure to that other place in Canada or directly to a designated holding area; and
 - (b) where the person and goods are transferred under customs control directly to a designated holding area, the person does not leave and the goods are not removed from that designated holding area other than to board or to be loaded on board a commercial passenger conveyance for departure to that other place in Canada.

PERIODIC REPORTING

- **8.** Canadian built commercial fishing vessels and duty paid fishing vessels that are registered or licensed under the *Canada Shipping Act* and that are imported during a fishing season may be reported at the close of that fishing season on condition that the vessels do not, after last having been reported under section 9 of the *Reporting of Exported Goods Regulations*,
 - (a) take on ships stores other than diesel fuel;
 - (b) land in a country other than Canada; or
 - (c) pick up goods that are not the product of Canada and that have not been reported under section 12 of the Act.
- 9. Vessels used on a day solely or principally to transport vehicles or passengers across international waters may be reported on that day after the last trip by that craft. SOR/88-77.
- 10. Goods transported by an air transportation company referred to in section 6 that has more than two flights a day coming into Canada from a place outside Canada and arriving at an airport in Canada where there is a designated customs office may be reported at that designated customs office at any time during the day of their arrival in Canada on condition that the air transportation company reports twice daily to an officer at that designated customs office on the imported goods that it has carried to that airport on that day.
- 11. (1) Goods imported by means of a pipeline used by one importer only during any period commencing on the 20th day of one month and ending on the 19th day of the month next following may be reported on or before the last day of that month.
- (2) Goods that are part of a shipment of goods imported by means of a pipeline used by more than one importer may be reported forthwith on arrival of the whole shipment.

REPORT OF GOODS UNLOADED PRIOR TO REPORT

12. Where a conveyance is unloaded in circumstances described in subsection 14(1) of the Act, the person in charge of the conveyance may first report the conveyance and the goods described in subsection 14(2) of the Act by telephone or other expedient means, and shall as soon as possible thereafter make a written report as prescribed by section 3.

ADVANCE NOTICE OF ARRIVAL

13. The owner or person in charge of any aircraft, vessel or railroad train that is intended to be used to transport 30 or more persons to Canada on other than a regular schedule or predetermined charter schedule shall give to the chief officer of customs at the proposed place of arrival in Canada, at least 72 hours prior to the arrival, notice in writing of the proposed time and place of arrival in Canada. SOR/88-77.

LIABILITY FOR DUTIES ON GOODS REPORTED

14. For the purposes of subsection 18(2) of the Act, proof that duties have been paid or of any of the events described in paragraphs (a) to (f) thereof shall be given in writing to an officer within 70 days after the date on which the duties are claimed to have been paid or the events are claimed to have happened.

SALE OF GOODS REGULATIONS

SOR/86-1010

Regulations respecting the sale of abondoned, forfeited and detained goods

SHORT TITLE

1. These Regulations may be cited as the Sale of Goods Regulations.

INTERPRETATION

2. In these Regulations,

"Act".—"Act" means the Customs Act:

"chief officer of customs".—"chief officer of customs", with respect to goods, means the manager of the customs office at which the goods are held or detained or of the customs office that serves the place where the goods are held or detained.

APPLICATION

3. These Regulations apply to the sale by public auction or public tender of anything that has been abandoned to Her Majesty in right of Canada under the Act, of anything the forfeiture of which is final under the Act and of goods that have been detained pursuant to subsection 146(1) of the Act.

GENERAL.

- 4. All goods sold under these Regulations shall be sold on an "as is-where is" basis.
- **5.** Where no bid or tender is received on goods offered for sale by public auction or public tender or where the chief officer of customs does not consider any of the bids or tenders acceptable, the chief officer of customs may cancel the sale and hold the goods for the next sale.

SALE BY PUBLIC TENDER

- **6.** Goods offered for sale by public tender shall be advertised in such form and manner as may be directed by the Minister.
- 7. All tenders shall be made in writing and shall be submitted to the chief officer of customs in sealed envelopes marked "tender" that shall remain sealed until the designated closing date, at which time the envelopes shall be opened in the presence of at least two officers.
- **8.** In the event that two or more tenders are in the same amount, the first tender received shall be given precedence.
- 9. (1) The chief officer of customs shall notify in writing the person whose tender has been accepted.
 - (2) Where a person whose tender has been accepted does not complete the sale within

seven days after the date on which notice is given pursuant to subsection (1), the chief officer of customs may cancel the sale to that person and accept any other tender.

SHIPS' STORES REGULATIONS

SOR/86-878, as am. SOR/88-425; SOR/90-831; SOR/93-153.

Regulations respecting Ships' Stores

SHORT TITLE

1. These Regulations may be cited as the Ships Stores Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Canadian coast guard ship".—"Canadian coast guard ship" means a coast guard ship owned by, or operated by or on behalf of, the Government of Canada;
- "Canadian fishing ship".—"Canadian fishing ship" means a fishing ship
 - (a) that is registered or licensed in Canada under the *Canada Shipping Act* and is owned by one or more persons each of whom is a Canadian citizen, a person resident and domiciled in Canada or a corporation incorporated under the laws of Canada or of a province and having its principal place of business in Canada, or
 - (b) that is not required by the *Canada Shipping Act* to be registered or licensed in Canada and is not registered or licensed elsewhere but is owned as described in paragraph (a);
- "Canadian warship".—"Canadian warship" means a ship of war, a military transport or a military supply ship owned by, or operated by or on behalf of, the Government of Canada;
- "fishing ship".—"fishing ship" means ship used for
 - (a) fishing, sealing or whaling outside Canada, or
 - (b) provisioning, servicing, repairing or maintaining ships engaged in fishing, sealing or whaling outside Canada;
- "foreign warship".—"foreign warship" means a ship of war, a military transport or a military supply ship owned by, or operated by or on behalf of, the government of a country other than Canada;
- "inland waters ship".—"inland waters ship" means a ship engaged in trade on an inland voyage, as defined in section 2 of the *Canada Shipping Act*;
- "international aircraft".—"international aircraft" means an aircraft operating internationally in the transportation of passengers or goods, or both, for reward;
- "military aircraft".—"military aircraft" means a military aircraft owned by, or operated by or on behalf of, the government of a country other than Canada;
- "service ship".—"service ship" means a ship registered in any country and used for the purpose of obtaining scientific data outside Canada;
- "telegraph cable ship".—"telegraph cable ship" means a ship registered in any country and used exclusively for the laying or repairing of oceanic telegraph cables. SOR/88-425; SOR/93-153.

SHIPS' STORES

3. For the purposes of the *Customs Act* and sections 68.17 and 70 of the *Excise Tax Act*, the goods set out in column II of an item of the schedule are hereby designated as ships' stores for use on board a conveyance within any class of conveyance described in column I of that item, subject to any applicable exception or limitation set out in the notes to the schedule.

SCHEDULE

(Section 3) Am. SOR/88-425

	Column I	Colume II
Item	Class of Conveyance	Ships' Stores
1.	 (1) An ocean-going ship engaged in international trade reported under section 95 of the Customs Act and proceeding outside Canada or proceeding to any port in Canada before reporting under that section and proceeding outside Canada (2) A ship normall engaged in international trade that is engaged, or intends to engage, in the coasting trade not exceeding five days (3) An ocean-going ship registered in Canada coasting, by way of the Panama Canal or Arctic waters, from a port on the east coast of Canada to a port on the west coast of Canada or from a port on the west coast of Canada or Ganada to a port on the east coast of Canada (4) An ocean-going towing or salvage tug reported under section 95 of the Customs Act and proceeding outside Canada (5) A foreign warship (6) A telegraph cable ship 	 (a) edible supplies (b) spirits and wines¹ (c) ales and beers¹ (d) mineral waters and soft drinks (e) tobacco, cigarettes and cigars¹ (f) matches and lighter fluid in dispensing cans (g) soaps and medicinal and toilet preparations (h) souvenirs and gifts (i) cleaning compounds and materials, including rags and cloth remnants (j) boiler compounds, fuel oil treatment preparations and filter sponges (k) gas for refrigeration equipment and welding purposes (l) petroleum products, except fuel oil and diesel fuel, and lubricants (m) coal, fuel oil and diesel fuel (n) coating for boilers and boiler bricks (o) paints, varnishes and solvents (p) stationery and other consumable paper supplies (q) corrosion and rust inhibitors (r) smoke abatement and oil slick dispersant preparations
2.	A ship normally engaged in international trade that is engaged, or intends to engage, in the coasting trade	 (a) petroleum products, except fuel oil and diesel fuel, and lubricants² (b) coal, fuel oil and diesel fuel²
3.	A fishing ship reported under section 95 of the <i>Customs Acts</i> and proceeding outside Canada	 (a) petroleum products, except diesel fuel, and lubricants³ (b) tobacco, cigarettes and cigars⁴ (c) spirits and wines⁴ (d) ales and beers⁴ (e) diesel fuel
4.	A Canadian fishing ship reported seasonally under the Reporting of Imported Goods Regulations	(a) diesel fuel

5.	(1) A Canadian warship proceeding outside Canada	(a) edible supplies (b) spirits and wines
	(2) A service ship reported under section	(c) ales and beers
	95 of the Customs Act and	(d) mineral waters and soft drinks(e) tobacco, cigarettes and cigars
	proceeding outside Canada	(f) matches and lighter fluid in
		dispensing cans
		(g) soaps and medicinal and toilet
		preparations
6.	An inland waters ship	(a) edible supplies
		(b) cleaning compounds and materials, including rags and cloth remnants
		(c) boiler compounds, fuel oil treatment preparations and filter sponges
		(d) gas for refrigeration equipment and welding purposes
		(e) petroleum products, except fuel oil
		and diesel fuel, and lubricants (f) coal, fuel oil and diesel fuel
		(g) coating for boilers and boiler bricks
		(h) paints, varnishes and solvents
		(i) corrosion and rust inhibitors
		(i) smoke abatement and oil slick
		dispersant preparations
7.	(1) A military aircraft(2) An international aircraft reported	(a) aviation fuel
	under section 95 of the <i>Customs Act</i>	(b) petroleum products, except aviation fuel, and lubricants
	and proceeding outside Canada, or	(c) spirits and wines
	reported under section 12 of the	(d) ales and beers
	Customs Act following a flight into	(e) mineral waters and soft drinks
	Canada, other than an aircraft carring	(f) tobacco, cigarettes and cigars
	passengers on domestic flights	(g) soaps and medicinal and toilet
		preparations
		(h) edible supplies
		(i) souvenirs and gifts
		(j) stationery and other consumable paper supplies
8.	(1) A Canadian coast guard ship reported	(a) spirits and wines ⁵
	under section 95 of the <i>Customs Act</i>	(b) ales and beers ⁶
	and proceeding on a voyage to the Arctic	(c) tobacco, cigarettes ⁷ and cigars
	(2) A Canadian fishing ship reported	
	under section 95 of the Customs Act	
	and proceeding outside Canada	
9.	A foreign yacht reported under section 95	(a) spirits and wines
	of the Customs Act and proceeding	(b) ales and beers
	outside Canada	(c) tobacco, cigarettes ⁷ and cigars

SOR/86-878 Sched.

NOTES

- 1. Are ships' stores only on a ship described in any subitems 1(1) and (3) to (6). SOR/90-831.
- 2. Limited to 15 days' supply as may be required to operate the ship, measured at the time the ship engages in the coasting trade.
- 3. Are ships' stores only on a ship that is on a voyage that takes at least five days. SOR/90-831.
- **4.** Are ships' stores only on a ship that is on a voyage that takes at least 10 days. SOR/90-831
- 5. Limited, for each officer and member of the crew, for each week of the voyage, to 1.1 litres (40 fluid ounces) of spirits or wine.
- **6.** Limited, for each officer and member of the crew, for each week of the voyage, to 8.2 litres (288 fluid ounces) of ale or beer.
- 7. Limited, for each officer and member of the crew, for each week of the voyage, to 250 cigarettes or .91 kilograms (2 pounds) of tobacco or 50 cigars.

SPECIAL SERVICES (CUSTOMS) REGULATIONS

SOR/86-1012, as am. SOR/92-274.

Regulations respecting Special Customs Services

SHORT TITLE

1. These Regulations may be cited as the Special Services (Customs) Regulations.

INTERPRETATION

2. In these Regulations, "chief officer of customs", with respect to an area or place, means the manager of the customs office or customs offices that serve that area or place. (agent en chef des douanes)

SPECIAL SERVICES

- **3.** (1) Subject to subsection (2), the following services performed by an officer at the request of a person in charge of imported goods or goods destined for exportation shall be considered to be special services:
 - (a) any services performed outside the hours fixed by the Deputy Minister for the performance of that service;
 - (b) any service performed in a place outside the area served by a customs office; or
 - (c) any service performed outside the ordinary course of the officer's duties.
 - (2) The following services performed by an officer are not special services:
 - (a) the examination of or acceptance of reports in respect of a military conveyance, unless that conveyance is being used in a commercial operation;
 - (b) the release of human remains:
 - (c) the release of perishable goods needed for the preservation of human life or health; and
 - (d) the release of non-perishable goods urgently needed for the preservation of human life or health.

SPECIAL SERVICES CHARGES

- **4.** Every person for whom a special service is performed by an officer other than an officer referred to in section 5 shall pay \$25 for the performance of that service.
- 5. (1) Where an officer is called in on duty to perform a special service for a person, that person shall pay
 - (a) \$54 for the first two hours or portion thereof spent in the performance of that service; and
 - (b) \$27 for each additional hour or portion thereof spent in the performance of that service.
- (2) No charge is payable for the time spent by an officer referred to in subsection (1) on meals and rest.

(3) Where more than one officer referred to in subsection (1) is required to perform a special service, the chargeable time in respect of that service shall be the aggregate of the time spent by all those officers in the performance of that service.

TRANSPORTATION, ACCOMMODATION AND MEALS

- **6.** (1) Subject to subsection (2), where a special service is to be performed by an officer, the person requesting that service shall provide the officer with such transportation, accommodation and meals as may be required by him to perform that service.
- (2) Where a person requesting a special service is not able to provide transportation and an officer is required to use his personal conveyance, the person requesting that service shall pay, in respect of the use of the personal conveyance, the greater of
 - (a) an amount based on the rates authorized by Treasury Board for the use of personal conveyances by public servants; and
 - (b) five dollars.

SECURITY

- 7. (1) Where the chief officer of customs for the place or area in which a special service is to be performed is of the opinion that security is required to guarantee the payment of charges incurred in providing that service, the person requesting that service shall deposit with the chief officer of customs security in an amount equal to the total charges to be incurred as estimated by the chief officer of customs.
 - (2) The security deposited under subsection (1) shall be in the form of
 - (a) cash;
 - (b) a certified cheque;
 - (c) a transferable bond issued by the Government of Canada; or
 - (d) a bond issued by
 - (i) a company that is registered and holds a certificate of registry to carry on the fidelity or surety class of insurance business and that is approved by the President of the Treasury Board as a company whose bonds may be accepted by the Government of Canada.
 - (ii) a member of the Canadian Payments Association referred to in section 4 of the Canadian Payments Association Act,
 - (iii) a corporation that accepts deposits insured by the Canada Deposit Insurance Corporation or the *Régie de l'assurance-dépôts du Québec* to the maximum permitted by the statutes under which those institutions were established,
 - (iv) a credit union as defined in paragraph 137(6)(b) of the *Income Tax Act*, or
 - (v) a corporation that accepts deposits from the public, if repayment of the deposits is guaranteed by Her Majesty in right of a province. SOR/91-274.

STORAGE OF GOODS REGULATIONS

SOR/86-991, as am. SOR/88-483; SOR/92-404.

Regulations respecting the Storage of Goods

SHORT TITLE

1. These Regulations may be cited as the Storage of Goods Regulations.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act;
- "business day".—"business day" means any day on which the customs office is open and accepts delivery or removal of commercial goods;
- "commercial goods".—"commercial goods" means goods for sale for any commercial, industrial, occupational, institutional or other similar use that are imported into Canada or exported from Canada;
- "place of safekeeping".—"place of safekeeping" means a place designated by the Minister of National Revenue pursuant to section 37 of the Act for the safekeeping of goods;
- "strike".—"strike" has the same meaning as in the *Public Service Staff Relations Act*. SOR/88-483.

TIME LIMIT FOR REMOVAL OF GOODS LEFT AT A CUSTOMS OFFICE

- **3.** (1) Subject to subsections (2) and (3), where goods in a customs office have not been removed therefrom within 40 days after the day on which the goods are reported under section 12 of the Act, the goods may be deposited in a place of safekeeping as provided in subsection 37(1) of the Act.
- (2) Where perishable goods in a customs office have not been removed therefrom within four days after the day on which they are reported under section 12 of the Act, the goods may be deposited in a place of safekeeping as provided in subsection 37(1) of the Act.
- (3) Where goods in a customs office are prescribed substances within the meaning of the *Atomic Energy Control Act* or prescribed items within the meaning of the *Atomic Energy Control Regulations* and the goods have not been removed from the customs office within 14 days after the day on which the goods are reported under section 12 of the Act, the goods may be deposited in a place of safekeeping as provided in subsection 37(1) of the Act.

STORAGE CHARGES FOR COMMERCIAL GOODS LEFT AT A CUSTOMS OFFICE

- **4.** (1) Subject to subsection (2), commercial goods left at a customs office in accordance with paragraph 19(1)(e) of the Act are subject to the storage charges set out in the schedule, beginning on the fourth business day after the day on which the commercial goods were left at the customs office.
 - (2) No storage charges are payable pursuant to subsection (1) on
 - (a) commercial goods that are imported by mail; or

- (b) commercial goods that cannot be removed from the customs office by the owner or importer thereof by reason of
 - (i) a strike,
 - (ii) a court proceeding,
 - (iii) an unauthorized act of an officer or the omission by an officer to perform a duty imposed on him by the Act,
 - (iv) a mistake of a third party, or
 - (v) a natural disaster. SOR/88-483; SOR/92-404.

TIME LIMIT FOR REMOVAL OF GOODS FROM A PLACE OF SAFEKEEPING

- **5.** (1) For the purposes of subsection 39(1) of the Act and subject to subsections (2) and (3), goods that have not been removed from a place of safekeeping within 30 days after they were deposited therein are, at the termination of that period of time, forfeit.
- (2) For the purposes of subsection 39(1) of the Act, perishable goods that have not been removed from a place of safekeeping within 24 hours after they were deposited therein are, at the termination of that period of time, forfeit.
- (3) For the purposes of subsection 39(1) of the Act, goods that are prescribed substances within the meaning of the *Atomic Energy Control Act* or prescribed items within the meaning of the *Atomic Energy Control Regulations* and that have not been removed from a place of safekeeping within 24 hours after they were deposited therein are, at the termination of that period of time, forfeit.

STORAGE CHARGES FOR GOODS DEPOSITED IN A PLACE OF SAFEKEEPING

- **6.** (1) Subject to subsection (2), the storage charges set out in the schedule shall be paid for goods deposited in a place of safekeeping operated by Her Majesty in right of Canada.
- (2) No storage charges are payable on goods deposited in a place of safekeeping operated by Her Majesty in right of Canada if
 - (a) the goods are delivered to the place of safekeeping in error and are removed therefrom by the owner or importer thereof forthwith after notification of the error; or
 - (b) the goods cannot be removed from the place of safekeeping by the owner or importer thereof by reason of
 - (i) a strike.
 - (ii) a court proceeding,
 - (iii) an unauthorized act of an officer or the omission by an officer to perform a duty imposed on him by the Act,
 - (iv) a mistake of a third party, or
 - (v) a natural disaster.

Sched.

STORAGE OF GOODS REGULATIONS

SCHEDULE

(sections 4 and 6)

Item	Column I Description of Goods	Column II Storage Charges
1.	Any automobile, truck or other vehicle and any self-propelled machinery	\$10 per day or part thereof
2.	Any shipment of goods other than goods described in item 1	\$0.45 per 50 kg or part thereof per day or part thereof, with a minimum charge of \$5 per day

SUBMISSION OF SAMPLES OF FABRICS FOR IMPORTATION REGULATIONS

SOR/86-872, as am. SOR/88-85.

Regulations respecting the Submission of Samples of Fabrics for Importation

SHORT TITLE

1. These Regulations may be cited as the Submission of Samples of Fabrics for Importation Regulations.

APPLICATION

2. These Regulations do not apply in respect of the imported fabrics listed in the schedule.

SAMPLE

- **3.** Every person importing fabrics into Canada shall ensure that there is attached to the accounting document required pursuant to subsection 32(1) of the *Customs Act* a sample of every quality or style of the imported fabrics.
- **4.** A sample of fabric referred to in section 3 must be of a size sufficient to identify the design or pattern, if any, woven into or imprinted on the fabric and must be at least 10 x 10 cm.

SCHEDULE

(Section 2)

- 1. Fabrics imported by individuals for their personal use and not for resale.
- 2. Samples of fabrics imported in lengths not exceeding 23 m.
- 3. Fabrics imported in lengths not exceeding 2 m.
- 4. Fabrics imported by custom tailors in lengths not exceeding 23 m.
- 5. Fabrics valued at at least \$4.38 per m and imported in lengths not exceeding 32 m.
- 6. Long pile fabrics.
- 7. Terry fabrics.
- 8. Chenille or tufted fabrics.
- 9. Felts other than those used for clothing.
- 10. Tire cord fabrics.
- 11. Lace and embroidered fabric.
- 12. Fabrics classified under tariff item No. 5911.20.00 or under code 1015 or 1060 of Schedule II to the *Customs Tariff*.
- 13. Fabrics solely of jute or hemp.
- 14. Fabrics containing asbestos.
- 15. Floor coverings.
- 16. Oil cloth.
- 17. Fabrics coated with asphalt or tar.
- 18. Coated fabrics, other than the fabrics referred to in item 17, or impregnated fabrics if the weight of the coating or impregnation is in excess of 50 per cent of the weight of the finished fabric.
- 19. Sensitized fabrics for photographic use. SOR/88-85.

TRANSPORTATION OF GOODS REGULATIONS

SOR/86-1064, as am. SOR/88-495; SOR/91-274.

Regulations respecting the Transportation of Goods

SHORT TITLE

1. These Regulations may be cited as the *Transportation of Goods Regulations*.

INTERPRETATION

- 2. In these Regulations,
- "Act".—"Act" means the Customs Act:
- "chief officer of customs".—"chief officer of customs", with respect to an area or place, means the manager of the customs office or customs offices that serve that area or place.

CONDITIONS UNDER WHICH GOODS MAY BE TRANSPORTED

- **3.** (1) Subject to subsection (3), no person shall transport or cause to be transported within Canada goods that have been imported but have not been released unless
 - (a) the person submits an application in the prescribed form for permission to transport the goods to the chief officer of customs for the area or place in which the transportation of the goods is to begin or, where the person proposes to transport such goods or cause such goods to be transported on a regular basis, to the Deputy Minister;
 - (b) the person deposits the security required by subsection 6(1) with the chief officer of the customs or the Deputy Minister, as the case may be;
 - (c) the person receives permission to transport the goods from the chief officer of customs or the Deputy Minister, as the case may be;
 - (d) the person presents a description of the goods in the prescribed form to an officer; and
 - (e) the conveyances or container or part thereof that contains the goods is sealed with a seal issued or approved by the Deputy Minister except where
 - (i) the conveyance or container or part thereof is of a nature or size that precludes the sealing thereof,
 - (ii) the goods are live animals, or
 - (iii) the person has been authorized by an officer to transport the goods or cause them to be transported in an unsealed conveyance or container.
- (2) Every person who transports or causes to be transported within Canada goods that have been imported but have not been released shall notify the consignee in the prescribed form of the arrival of the goods.
- (3) Subsection (1) does not apply to the transportation of goods within Canada prior to the time the goods are required to be reported under section 12 of the Act and under the *Reporting of Imported Goods Regulations* made pursuant thereto.

- 4. (1) If, as the result of an accident or other unforeseen event occurring in the course of transporting goods,
 - (a) a seal is damaged or broken,
 - (b) a container or conveyance is damaged or disabled and to preserve the goods they must be removed therefrom, or
- (c) a conveyance is damaged or disabled and can no longer be used to transport the goods, the person transporting the goods shall forthwith report the accident or event, as the case may be, to the chief officer of customs for the area or place in which the accident or event occurred or the damage, break or disablement was discovered or to the nearest detachment of the Royal Canadian Mounted Police.
- (2) In any case described in paragraph (1)(b) or (c), the goods being transported shall not be transferred to another conveyance or container unless
 - (a) the person who transports the transferred goods or who causes those goods to be transported complies with the requirements of these Regulations; and
 - (b) in the case of goods transferred from a conveyance or container that is sealed,
 - (i) the transfer is conducted in the presence of an officer or a police officer who has been requested by the chief officer of customs to supervise the transfer, and
 - (ii) the conveyance or container to which the goods are transferred is sealed with a seal issued or approved by the Deputy Minister.

LIABILITY OF TRANSPORTER FOR DUTIES

5. For the purposes of subsection 20(2) of the Act, proof of any of the events described in paragraphs (a) to (e) thereof shall be given in writing to an officer within 70 days of the day on which the goods were reported pursuant to section 12 of the Act or the events are claimed to have happened.

SECURITY

- **6.** (1) Every person who transports or causes to be transported within Canada goods that have been imported but have not been released shall give security to secure his compliance with the requirements of the Act and the regulations respecting the transportation of the goods.
 - (2) The security given under subsection (1) shall be in the form of
 - (a) cash;
 - (b) a certified cheque:
 - (c) a transferable bond issued by the Government of Canada; or
 - (d) a bond issued by
 - (i) a company that is registered and holds a certificate of registry to carry on the fidelity or surety class of insurance business and that is approved by the President of the Treasury Board as a company whose bonds may be accepted by the Government of Canada,
 - (ii) a member of the Canadian Payments Association referred to in section 4 of the Canadian Payments Association Act,
 - (iii) a corporation that accepts deposits insured by the Canada Deposit Insurance

Corporation or the *Régie de l'assurance-dépôts du Québec* to the maximum permitted by the statutes under which those institutions were established,

- (iv) a credit union as defined in paragraph 37(6)(b) of the Income Tax Act, or
- (v) a corporation that accepts deposits from the public, if repayment of the deposits is guaranteed by Her Majesty in right of a province.
- (3) Subject to subsection (4), the security referred to in subsection (1) shall be in an amount equal to the greater of
 - (a) the duties payable in respect of the goods; and
 - (b) \$1,000
- (4) Where goods are to be transported or caused to be transported by a person on a regular basis, the security referred to in subsection (1) shall be in an amount that is determined by the Minister, but in no case shall the amount of security be less than \$5,000.
- (5) The Minister may, at any time where the Minister considers it necessary, require a person who transports or causes to be transported goods within Canada to increase the amount of security given under subsection (1) to an amount sufficient to ensure the payment of any duties payable in respect of those goods. SOR/88-495; SOR/91-274.

RECORDS

- 7. (1) Every person who transports or causes to be transported goods into Canada, or transports or causes to be transported within Canada goods that have been imported but have not been released, shall keep all invoices, bills, accounts and statements, or a copy thereof, relating to the transportation of the goods and, in addition, shall keep
 - (a) in the case of goods transported into Canada, any written report required to be made under the *Reporting of Imported Goods Regulations*, or a copy thereof; and
 - (b) in the case of goods that have been imported into Canada but have not been released, the description of the goods referred to in paragraph 3(1)(d), or a copy thereof.
- (2) The records described in subsection (1) shall be kept for a period of three years commencing on the first day of January of the calendar year following the calendar year during which the goods were transported.

VALUATION FOR DUTY REGULATIONS

SOR/86-792

Regulations respecting the determination of the value for duty of imported goods

SHORT TITLE

1. These Regulations may be cited as the Valuation for Duty Regulations.

INTERPRETATION

2. In these Regulations, "Act" means the Customs Act.

DETERMINATION OF THE VALUE FOR DUTY OF IMPORTED GOODS

- 3. For the purposes of subsection 48(3) of the Act, in determining whether the transaction value of goods being appraised closely approximates another value referred to in that subsection, there shall be taken into consideration
 - (a) the following factors, namely,
 - (i) the nature of the goods being appraised,
 - (ii) the nature of the industry that produces the goods being appraised,
 - (iii) the season in which the goods being appraised are imported, and
 - (iv) whether a difference in values is commercially significant; and
 - (b) any difference in respect of the sales being compared, determined on the basis of sufficient information and relating to
 - (i) the trade levels at which the sales take place,
 - (ii) the quantity levels of the sales,
 - (iii) any of the amounts referred to in subsections 48(5) of the Act, and
 - (iv) the costs, charges or expenses that are incurred by a vendor when selling to a purchaser to whom he is not related, but are not incurred when a vendor sells to a purchaser to whom he is related.
- **4.** (1) For the purposes of subparagraph 48(5)(a)(iii) of the Act, the value of any goods referred to in clauses 48(5)(a)(iii)(A) to (C) of the Act that are supplied, directly or indirectly, by the purchaser of the imported goods referred to in that subparagraph shall be determined, in relation to the goods that are supplied,
 - (a) by ascertaining
 - (i) their cost of acquisition or lease incurred by the purchaser, if they are acquired or leased from a person who is not related to the purchaser at the time of the acquisition or lease,
 - (ii) their cost of acquisition or lease incurred by the person from whom the purchaser acquires or leases them, if that person does not produce the goods and is related to the purchaser at the time of the purchaser's acquisition or lease, or

- (iii) their costs of production, if they are produced by the purchaser or by a person related to the purchaser at the time of production;
- (b) by adding thereto
 - (i) their cost of transportation to the place where they are used in the production of the imported gods, and
 - (ii) the value added to them by any repairs or modifications made after their acquisition, lease or production, as the case may be; and
- (c) by deducting therefrom an amount to account for any use made of them after their acquisition, lease or production, as the case may be, and before their use in the production of the imported goods.
- (2) For the purposes of subparagraph 48(5)(a)(iii) of the Act, the value of any work, plans or sketches referred to in clause 48(5)(a)(iii)(D) of the Act that are supplied, directly or indirectly, by the purchaser of the imported goods referred to in that subparagraph shall be determined by ascertaining, in relation to the work, plans or sketches,
 - (a) their cost of acquisition or lease incurred by the purchaser, if they
 - (i) are not available generally to the public, and
 - (ii) are acquired or leased from a person who is not related to the purchaser at the time of the acquisition or lease;
 - (b) their cost of acquisition or lease incurred by the person from whom the purchaser acquires or leases them, if
 - (i) that person does not produce the work, plans or sketches, and is related to the purchaser at the time of the purchaser's acquisition or lease, and
 - (ii) the work, plans or sketches are not available generally to the public;
 - (c) the cost to the public of obtaining copies of them, if they are available generally to the public; or
 - (d) their cost of production, if they are produced by the purchaser or a person related to him at the time of production.
- **5.** (1) For the purposes of paragraph 51(4)(a) of the Act, an amount equal to the amount of commission or the amount for profit and general expenses, as referred to therein in respect of the appraisal of imported goods, shall be calculated on a percentage basis and determined from sufficient information that is prepared in a manner consistent with generally accepted accounting principles and, subject to subsection (2), is supplied by or on behalf of the importer of the goods being appraised.
- (2) Where the amount determined from sufficient information supplied by or on behalf of an importer pursuant to subsection (1) is not consistent with the amount generally earned or reflected in connection with sales in Canada by importers who deal with vendors in a manner consistent with that of persons who are not related to each other, the sufficient information shall be based on an examination of sales in Canada
 - (a) of the narrowest group or range of goods of the same class or kind as the goods being appraised, including the goods being appraised;
 - (b) by importers dealing with vendors in a manner consistent with that of persons who are not related to each other; and
 - (c) from which sufficient information can be obtained.
 - **6.** (1) For the purposes of paragraph 52(2)(a) of the Act, the costs, charges and expenses,

or the value, referred to therein in respect of goods being appraised shall be determined on the basis of the following accounts or information supplied by or on behalf of the producer of the goods and prepared in a manner consistent with generally accepted accounting principles of the country of production of the goods being appraised:

- (a) the commercial accounts of the producer of the goods being appraised; or
- (b) other sufficient information relating to the production of the goods being appraised.
- (2) For the purposes of paragraph 52(2)(b) of the Act, the amount for profit and general expenses referred to therein in respect of goods being appraised shall be calculated on a percentage basis and determined from sufficient information that is prepared in a manner consistent with generally accepted accounting principles of the country of production of the goods being appraised and, subject to subsection (3), is supplied by or on behalf of the producer of the goods being appraised.
- (3) Where the amount determined from sufficient information supplied by or on behalf of a producer pursuant to subsection (2) is not consistent with the amount generally reflected in sales for export to Canada by producers of goods of the same class or kind who deal with importers in a manner consistent with that of persons who are not related, the sufficient information shall be based on an examination of sales for export to Canada
 - (a) of the narrowest group or range of goods of the same class or kind as the goods being appraised, including the goods being appraised;
 - (b) by producers dealing with importers in a manner consistent with that of persons who are not related; and
 - (c) from which sufficient information can be obtained.

CULTURAL PROPERTY EXPORT AND IMPORT ACT

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CULTURAL PROPERTY EXPORT AND IMPORT ACT

R.S.C. 1985, c. C-51, as am. R.S.C. 1985, c. 1 (2nd Supp.), s. 213(4); S.C. 1991, c. 49, ss. 216 to 219*; S.C. 1994, c. 13, s. 7(1)(c).

SHORT TITLE

1. Short title.—This Act may be cited as the Cultural Property Export and Import Act.

INTERPRETATION

- 2. Definitions.—In this Act,
- "Control List".—"Control List" means the Canadian Cultural Property Export Control List established under section 4;
- "expert examiner".—"expert examiner" means a person or institution designated as an expert examiner under section 6;
- "export permit".— "export permit" means a permit to export issued by a permit officer under this Act;
- "general permit".—"general permit" means a permit to export issued by the Minister under section 17;
- "institution".—"institution" means an institution that is publicly owned and is operated solely for the benefit of the public, that is established for educational or cultural purposes and that conserves objects and exhibits them or otherwise makes them available to the public;
- "Minister".— "Minister" means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council as the Minister for the purposes of this Act;
- "permit officer".—"permit officer" means a person designated as a permit officer under section 5;
- "public authority".—"public authority" means Her Majesty in right of Canada or a province, an agent of Her Majesty in either such right, a municipality in Canada, a municipal or public body performing a function of government in Canada or a corporation performing a function or duty on behalf of Her Majesty in right of Canada or a province;
- "resident of Canada".—"resident of Canada" means, in the case of a natural person, a person who ordinarily resides in Canada and, in the case of a corporation, a corporation that has its head office in Canada or maintains one or more establishments in Canada to which employees of the corporation employed in connection with the business of the corporation ordinarily report for work;
- "Review Board".—"Review Board" means the Canadian Cultural Property Export Review Board established by section 18.

^{*}Note the coming-into-force provisions of S.C. 1991, c. 49, ss. 216(2), 217(2), 218(3), 218(4), and 219(2).

HER MAJESTY

3. Binding on Her Majesty.—This Act is binding on Her Majesty in right of Canada or a province.

CANADIAN CULTURAL PROPERTY EXPORT CONTROL LIST

- **4.** (1) **Establishment of control list.**—The Governor in Council, on the recommendation of the Minister made after consultation with the Secretary of State for External Affairs, may by order establish a Canadian Cultural Property Export Control List.
- (2) Inclusion.—Subject to subsection (3), the Governor in Council may include in the Control List, regardless of their places of origin, any objects or classes of objects hereinafter described in this subsection, the export of which the Governor in Council deems it necessary to control in order to preserve the national heritage in Canada:
 - (a) objects of any value that are of archaeological, prehistorical, historical, artistic or scientific interest and that have been recovered from the soil of Canada, the territorial sea of Canada or the inland or other internal waters of Canada;
 - (b) objects that were made by, or objects referred to in paragraph (d) that relate to, the aboriginal peoples of Canada and that have a fair market value in Canada of more than five hundred dollars;
 - (c) objects of decorative art, hereinafter described in this paragraph, that were made in the territory that is now Canada and are more than one hundred years old;
 - (i) glassware, ceramics, textiles, woodenware and works in base metals that have a fair market value in Canada of more than five hundred dollars, and
 - (ii) furniture, sculptured works in wood, works in precious metals and other objects of decorative art that have a fair market value in Canada of more than two thousand dollars;
 - (d) books, records, documents, photographic positives and negatives, sound recordings, and collections of any of those objects that have a fair market value in Canada of more than five hundred dollars:
 - (e) drawings, engravings, original prints and water-colours that have a fair market value in Canada of more than one thousand dollars; and
 - (f) any other objects that have a fair market value in Canada of more than three thousand dollars.
- (3) **Exclusions.**—No object shall be included in the Control List if that object is less than fifty years old or was made by a natural person who is still living.
- (4) **Deeming provision.**—For the purposes of this Act, an object within a class of objects included in the Control List is deemed to be an object included in the Control List.

PERMIT OFFICERS

5. Designation of permit officers.—The Minister, with the approval of the Minister of National Revenue, may designate any persons or classes of persons employed in that portion of the Department of National Revenue under the power and authority of the Deputy Minister of National Revenue as permit officers to receive applications for export permits and to issue export permits under this Act. S.C. 1994, c. 13, s. 7(1)(c).

EXPERT EXAMINERS

- **6.** (1) **Designation of expert examiners.**—The Minister may designate any resident of Canada or any institution in Canada as an expert examiner for the purposes of this Act.
- (2) **Remuneration.**—An expert examiner that is not an agent of Her Majesty in right of Canada or a province or is not an employee of, or an employee of an agent of, Her Majesty in right of Canada or a province shall be paid such remuneration for services performed under this Act as may be approved by the Treasury Board.
- (3) **Expenses.**—An expert examiner or, where an expert examiner is an institution, the person acting for the institution is entitled, within such limits as may be established by the Treasury Board, to be paid reasonable travel and living expenses incurred while absent from his ordinary place of residence in connection with services performed under this Act.

EXPORT PERMITS

- **7. Immediate issue of export permit.**—A permit officer who receives from a resident of Canada an application for an export permit shall issue the permit forthwith if the person applying for the permit establishes to the satisfaction of the permit officer that the object in respect of which the application is made
 - (a) was imported into Canada within the thirty-five years immediately preceding the date of the application and was not exported from Canada under a permit issued under this Act prior to that importation;
 - (b) was lent to an institution or public authority in Canada by a person who was not a resident of Canada at the time the loan was made; or
 - (c) is to be removed from Canada for a purpose prescribed by regulation for a period of time not exceeding such period of time as may be prescribed by regulation for the purposes of this paragraph.
- **8.** (1) **Determination by permit officer.**—A permit officer who receives from a resident of Canada an application for an export permit in respect of an object shall, where he does not issue an export permit under section 7, and where he is not aware of any notice of refusal sent in respect of the object under subsection 13(1) during the two years immediately preceding the date of the application, determine where the object is included in the Control List.
- (2) **Export permit where object not included in Control List.**—Where a permit officer determines that an object in respect of which an application for an export permit is made is not included in the Control List, the permit officer shall forthwith issue an export permit in respect of the object.
- (3) **Reference to expert examiner.**—Where a permit officer determines that an object in respect of which an application for an export permit is made is or might be included in the Control List, the permit officer shall forthwith refer the application to an expert examiner for consideration.
- **9. Determination by expert examiner.**—Where an application for an export permit is referred to an expert examiner pursuant to subsection 8(3), the expert examiner shall forthwith determine whether the object in respect of which the application is made is included in the Control List.
- 10. Where object not included in control list.—Where an expert examiner determines that an object that is the subject of an application for an export permit that has been referred to him is not included in the Control List, the expert examiner shall forthwith in writing advise the

permit officer who referred the application to issue an export permit in respect of the object and shall forthwith send a copy of that advice to the Review Board and the Minister.

- 11. (1) Where object included in control list.—Where an expert examiner determines that an object that is the subject of an application for an export permit that has been referred to him is included in the Control List, the expert examiner shall forthwith further determine
 - (a) whether that object is of outstanding significance by reason of its close association with Canadian history or national life, its aesthetic qualities, or its value in the study of the arts or sciences; and
 - (b) whether the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.
- (2) Export permit to be issued.—Where an expert examiner determines that an object that is the subject of an application for an export permit that has been referred to him is not of outstanding significance under paragraph (1)(a) or does not meet the degree of national importance referred to in paragraph (1)(b), the expert examiner shall forthwith in writing advise the permit officer who referred the application to issue an export permit in respect of the object and shall forthwith send a copy of that advice to the Review Board and the Minister.
- (3) Export permit not to be issued.—Where an expert examiner determines that an object that is the subject of an application for an export permit that has been referred to him is of outstanding significance under paragraph (1)(a) and meets the degree of national importance referred to in paragraph (1)(b), the expert examiner shall forthwith in writing advise the permit officer who referred the application not to issue an export permit in respect of the object and shall provide the permit officer with the reasons therefor.
- 12. Issue of export permit.—Subject to sections 14 and 16, a permit officer shall issue an export permit forthwith where the permit officer is advised by an expert examiner or directed by the Review Board to do so.
- 13. (1) Notice of refusal.—Where a permit officer is advised by an expert examiner pursuant to subsection 11(3) not to issue an export permit, the permit officer shall send a written notice of refusal to the applicant, which notice shall include the reasons given by the expert examiner for the refusal.
- (2) Copy to Review Board.—A permit officer who sends a notice of refusal under subsection (1) shall forthwith send a copy thereof to the Review Board.
- 14. Deposit of copy.—No export permit shall, unless it is issued under section 7, be issued under this Act for an object within a class of objects prescribed under paragraph 39(d), where the object is included in the Control List, until a copy of that object has been deposited by the person applying for the permit in such institution as the Minister may direct.
- 15. Alteration of permits by Minister and notice.—The Minister may amend, suspend, cancel or reinstate any export permit, other than an export permit issued on the direction of the Review Board, and where an export permit is amended, suspended, cancelled or reinstated, the Minister shall forthwith send a written notice to that effect to the person who applied for the permit.
- 16. No export permit for two years.—No export permit shall, unless it is issued under section 7 or on the direction of the Review Board pursuant to section 29 or 30, be issued under this Act in respect of an object, where the object is included in the Control List, during a period of two years from the date on which a notice of refusal was sent in respect of that object under subsection 13(1).

GENERAL PERMITS

- 17. (1) General permits to export.—The Minister may issue to any resident of Canada who applies therefor a general permit to export any objects included in the Control List subject to such terms and conditions as the Minister may require and may at any time amend, suspend, cancel or reinstate any such permit.
- (2) Open general permits to export.—The Minister may, with the concurrence of the Secretary of State for External Affairs, issue generally to all persons a general permit to export objects within any class of objects that is included in the Control List and that is specified in the permit subject to such terms and conditions as the Minister may require and may, with the concurrence of the Secretary of State of External Affairs, at any time amend, suspend, cancel or reinstate any such permit.

REVIEW BOARD

Review Board Established

- 18. (1) Review board established.—There is hereby established a board to be known as the Canadian Cultural Property Export Review Board, consisting of a Chairman and not less than six or more than twelve other members appointed by the Governor in Council on the recommendation of the Minister.
- (2) **Members.**—The members of the Review Board, other than the Chairman and two other members who shall be chosen generally from among residents of Canada, shall be chosen in equal numbers
 - (a) from among residents of Canada who are or have been officers, members or employees of art galleries, museums, archives, libraries or other similar institutions in Canada; and
 - (b) from among residents of Canada who are or have been dealers in or collectors of art, antiques or other objects that form part of the national heritage.
- (3) **Acting Chairman.**—The Review Board may authorize one of its members to act as Chairman in the event of the absence or incapacity of the Chairman or if the office of Chairman is vacant.
- (4) **Quorum.**—Three members, at least one of whom is a person described in paragraph 2(a) and one of whom is a person described in paragraph (2)(b), constitute a quorum of the Review Board.
- 19. (1) Remuneration.—Each member of the Review Board who is not an employee of, or an employee of an agent of, Her Majesty in right of Canada or a province shall be paid such salary or other amount by way of remuneration as may be fixed by the Governor in Council.
- (2) **Expenses.**—Each member of the Review Board is entitled, within such limits as may be established by the Treasury Board, to be paid reasonable travel and living expenses incurred while absent from his ordinary place of residence in connection with the work of the Review Board.

Duties

- 20. Duties.—The Review Board shall, on request,
- (a) pursuant to section 29, review applications for export permits;

- (b) pursuant to section 30, make determinations respecting fair cash offers to purchase; and
- (c) pursuant to section 32, make determinations for the purposes of subparagraph 39(1)(a)(i.1), paragraph 110.1(1)(c), the definition "total cultural gifts" in subsection 118.1(1) and subsection 118.1(10) of the *Income Tax Act*. S.C. 1991, c. 49, s. 216(1).

Head Office and Sittings

- 21. (1) Head office.—The head office of the Review Board shall be at such place in Canada as the Governor in Council may by order prescribe.
- (2) Sittings.—The Review Board may sit at such times and places in Canada as it considers necessary or desirable for the proper conduct of its business.

Advisers

- 22. (1) Expert advice.—The Review Board may call on any person who has professional, technical or other special knowledge to assist it in any matter in an advisory capacity.
- (2) Valuation experts.—The Minister, on the request of the Review Board, may appoint and fix the remuneration of valuation experts to assist the Review Board in making determinations pursuant to section 30 respecting fair cash offers to purchase or pursuant to section 32 respecting the fair market value of objects disposed of, or proposed to be disposed of, to institutions or public authorities. S.C. 1991, c. 49, s. 217(1).

Administration

23. Administrative services.—The Minister shall provide administrative services to the Review Board.

Rules and Procedure

- 24. Rules.—The Review Board may make rules not inconsistent with this Act for the conduct of its proceedings and the performance of its duties and functions under this Act.
- **25.** Review board may receive information.—The Review Board may receive any information presented to it orally or in writing that it considers to be relevant to any matter before it and in so doing it is not bound by any legal or technical rules of evidence.
- 26. Information given to applicant.—The Review Board shall make the substance of any information received by it in respect of a matter before it known to the person who applied for an export permit in respect of the object to which the matter relates, or to the person, institution or public authority that applied for a determination under subsection 32(1), as the case may be, and, before the Review Board decides the matter, it shall give that person, institution or public authority an opportunity to make representations in respect of that information.
- 27. Exclusion from hearing.—The Review Board may exclude any person not directly interested in a matter being heard before it from the hearing unless, where the matter is in respect of an object in respect of which an application for an export permit has been made, the applicant for the permit requests that the hearing be held in public, in which case it shall be so held.
 - 28. Review Board shall dispose of matters informally and expeditiously.—The

Review Board shall dispose of any matter before it as informally and expeditiously as, in its opinion, the circumstances and considerations of fairness will permit.

Review Of Applications For Export Permits

- **29.** (1) **Request for review by Review Board.**—Any person who receives a notice of refusal under section 13 or a notice under section 15 may, within thirty days after the date on which the notice was sent, by notice in writing given to the Review Board, request a review of his application for an export permit by the Review Board.
- (2) **Review to be held within four months.**—The Review Board shall review an application for an export permit and, unless the circumstances of a particular case require otherwise, render its decision within four months after the date a request is received under subsection (1).
- (3) **Determination of the Review Board.**—In reviewing an application for an export permit, the Review Board shall determine whether the object in respect of which the application was made
 - (a) is included in the Control List;
 - (b) is of outstanding significance for one or more of the reasons set out in paragraph 11(1)(a); and
 - (c) meets the degree of national importance referred to in paragraph 11(1)(b).
- (4) **Object that does not meet criteria.**—Where the Review Board determines that an object fails to meet one or more of the criteria set out in subsection (3), it shall direct a permit officer to issue an export permit forthwith in respect of the object.
- (5) **Object that meets criteria.**—Where the Review Board determines that an object meets all of the criteria set out in subsection (3), it shall,
 - (a) if it is of the opinion that a fair offer to purchase the object might be made by an institution or public authority in Canada within six months after the date of its determination, establish a delay period of not less than two months and not more than six months during which the Review Board will not direct that an export permit be issued in respect of the object; or
 - (b) in any other case, direct a permit officer to issue an export permit forthwith in respect of the object.
- (6) **Notification of delay period.**—Where the Review Board establishes a delay period under paragraph (5)(a) in respect of an object, the Board shall give written notice of the delay period to the person who has applied for an export permit in respect of the object and to the Minister, which notice shall include the reasons for the determination of the Board that the object meets all of the criteria set out in subsection (3).
- (7) **Idem.**—The Minister, on receiving notice of a delay period under subsection (6), shall advise such institutions and public authorities in Canada as the Minister sees fit of the delay period and of the object in respect of which the delay period was established.
- **30.** (1) **Request for determination of fair offer to purchase.**—Subject to subsection (2), where the Review Board establishes a delay period under paragraph 29(5)(a) in respect of an object and an offer to purchase the object is made by an institution or a public authority in Canada within that period, either the person who applied for an export permit in respect of the object or the institution or public authority making the offer to purchase may, where the offer is

not accepted, by notice in writing given to the Review Board, request the Review Board to determine the amount of a fair cash offer to purchase.

- (2) When request to be made.—No request may be made under subsection (1) less than thirty days before the end of the delay period established under paragraph 29(5)(a) in respect of the object in respect of which the request is made.
- (3) **Determination of the Review Board.**—Where the Review Board receives a request under subsection (1), it shall determine the amount of a fair cash offer to purchase the object in respect of which the request is made and advise the person who applied for an export permit in respect of the object and the institution or public authority that offered to purchase the object of its determination.
- (4) **Direction for export permit.**—Where the Review Board establishes a delay period under paragraph 29(5)(a) in respect of an object and does not receive a request under subsection (1) in respect of the object, it shall forthwith, after the expiration of the delay period and on the request of the person who requested the review under subsection 29(1), direct a permit officer to issue an export permit forthwith in respect of the object.
- (5) Idem.—Where the Review Board establishes a delay period under paragraph 29(5)(a) in respect of an object and receives a request under subsection (1) in respect of the object, it shall, after the expiration of the delay period or after it has determined the amount of a fair cash offer to purchase the object under subsection (3), whichever time is the later, and on the request of the person who requested the review under subsection 29(1), direct a permit officer to issue an export permit forthwith in respect of the object unless it is satisfied that an institution or public authority has, before the request under this subsection was made, offered to purchase the object for an amount equal to or greater than the amount of the fair cash offer to purchase determined by the Review Board.
- **31.** Limitation on export permits.—The Review Board shall not direct that an export permit be issued except in accordance with section 29 or 30.

Determination Relating to Income Tax Matters

- **32.** (1) **Request for determination by Review Board.**—For the purposes of subparagraph 39(1)(a)(i.1) or paragraph 110.1(1)(c), the definition "total cultural gifts" in subsection 118.1(1) and subsection 118.1(10) of the *Income Tax Act*, where a person disposes of or proposes to dispose of an object to an institution or a public authority designated under subsection (2), the person, institution or public authority may request, by notice in writing given to the Review Board, a determination by the Review Board as to whether the object meets the criteria set out in paragraphs 29(3)(b) and (c) and a determination by the Review Board of the fair market value of the object.
- (2) **Designated authorities and institutions.**—For the purposes of subparagraph 39(1)(a)(i.1), paragraph 110.1(1)(c), the definition "total cultural gifts" in subsection 118.1(1), subsection 118.1(10) and section 207.3 of the *Income Tax Act*, the Minister may designate any institution or public authority indefinitely or for a period of time, and generally or for a specified purpose.
- (3) **Revocation of designation.**—The Minister may at any time revoke a designation made under subsection (2).
- (4) **Determination within four months.**—The Review Board shall consider a request made under subsection (1) and, unless the circumstances of a particular case require otherwise, make a determination within four months after the date of the request is received.

(5) **Redetermination.**—The Review Board may, at any time after determining the fair market value of an object in respect of its disposition or proposed disposition, redetermine the fair market value of the object where additional information becomes available to the Review Board that, in the opinion of the Review Board, is relevant to the determination of the fair market value of the object, and such a redetermination shall be deemed, for the purposes of the *Income Tax Act*, to be the only determination of the fair market value of the object made by the Review Board in respect of that disposition or proposed disposition. S.C. 1991, c. 49, s. 218(1).

Income Tax Certificate

- 33. (1) Income tax certificate.—Where the Review Board determines or redetermines the fair market value of an object in respect of which a request was made under section 32 or determines that an object in respect of which a request is made under subsection 29(1) or 32(1) meets the criteria set out in paragraphs 29(3)(b) and (c), it shall provide the person, institution or public authority that made the request with a certificate to that effect in such form as the Minister of National Revenue may specify.
- (2) **Communication of information.**—An official of the Department of Communications or a member of the Review Board may communicate to an official of the Department of National Revenue, solely for the purposes of administering the *Income Tax Act*, information obtained under this Act for the purposes of administering sections 32 and 33. S.C. 1991, c. 49, s. 219(1).

Report to Minister

34. Report to Minister.—The Chairman of the Review Board shall, as soon as possible after March 31 in each year, submit to the Minister a report of the operations of the Review Board for the previous fiscal year and its recommendations, if any.

FINANCIAL

- **35. Grants and loans from moneys appropriated.**—The Minister may, out of moneys appropriated by Parliament for such purposes, make grants and loans to institutions and public authorities in Canada for the purchase of objects in respect of which export permits have been refused under this Act or for the purchase of cultural property situated outside Canada that is related to the national heritage.
- **36.** (1) Canadian Heritage Preservation Endowment Account established.—There shall be established in the accounts of Canada a special account to be known as the Canadian Heritage Preservation Endowment Account.
- (2) Amounts to be credited to the Canadian Heritage Preservation Endowment Account.—There shall be credited to the Canadian Heritage Preservation Endowment Account
 - (a) all moneys received by Her Majesty by gift, bequest or otherwise for the purpose of making grants to institutions and public authorities in Canada for the purchase of objects in respect of which export permits have been refused under this Act, or for the purchase of cultural property situated outside Canada that is related to the national heritage;
 - (b) all moneys received by Her Majesty as income on or as proceeds from the sale of any securities received by Her Majesty for a purpose referred to in paragraph (a); and
 - (c) an amount representing interest on the balance from time to time to the credit of the

account at such rates and calculated in such manner as the Governor in Council may, on the recommendation of the Minister of Finance, prescribe.

(3) Amounts that may be charged to the Canadian Heritage Preservation Endowment Account.—There may be charged to the Canadian Heritage Preservation Endowment Account such amounts as the Minister may expend otherwise than under section 35 for grants to institutions and public authorities in Canada for the purchase of objects in respect of which export permits have been refused under this Act or for the purchase of cultural property situated outside Canada that is related to the national heritage.

FOREIGN CULTURAL PROPERTY

37. (1) Definitions.—In this section,

- "cultural property agreement".—"cultural property agreement", in relation to a foreign State, means an agreement between Canada and the foreign State or an international agreement to which Canada and the foreign State are both parties, relating to the prevention of illicit international traffic in cultural property;
- "foreign cultural property".—"foreign cultural property", in relation to a reciprocating State, means any object that is specifically designated by that State as being of importance for archaeology, prehistory, history, literature, art or science;
- "reciprocating State".—"reciprocating State" means a foreign State that is a party to a cultural property agreement.
- (2) **Illegal imports.**—From and after the coming into force of a cultural property agreement in Canada and a reciprocating State, it is illegal to import into Canada any foreign cultural property that has been illegally exported from that reciprocating State.
- (3) Action for recovery of foreign cultural property.—Where the government of a reciprocating State submits a request in writing to the Minister for the recovery and return of any foreign cultural property that has been imported into Canada illegally by virtue of subsection (2) and that is in Canada in the possession of or under the control of any person, institution or public authority, the Attorney General of Canada may institute an action in the Federal Court or in a superior court of a province for the recovery of the property by the reciprocating State.
- (4) **Notice.**—Notice of the commencement of an action under this section shall be served by the Attorney General of Canada on such persons and given in such manner as is provided by the rules of the court in which the action is taken, or, where the rules do not so provide, served on such persons and given in such manner as is directed by a judge of the court.
- (5) Order for recovery of designated property.—A court in which an action has been taken under this section on behalf of a reciprocating State may, after affording all persons that it considers to have an interest in the action a reasonable opportunity to be heard, make an order for the recovery of the property in respect of which the action has been taken or any other order sufficient to ensure the return of the property to the reciprocating State, where the court is satisfied that the property has been illegally imported into Canada by virtue of subsection (2) and that the amount fixed under subsection (6), if any, has been paid to or for the benefit of the person, institution or public authority referred to in that subsection.
- (6) Compensation.—Where any person, institution or public authority establishes to the satisfaction of the court in which an action under this section is being considered that the person, institution or public authority
 - (a) is a bona fide purchaser for value of the property in respect of which the action has

been taken and had no knowledge at the time the property was purchased by him or it that the property had been illegally exported from the reciprocating State on whose behalf the action has been taken, or

(b) has a valid title to the property in respect of which the action has been taken and had no knowledge at the time such title was acquired that the property had been illegally exported from the reciprocating State on whose behalf the action has been taken,

the court may fix such amount to be paid as compensation by the reciprocating State to that person, institution or public authority as the court considers just in the circumstances.

- (7) **Safe-keeping.**—The court may, at any time in the course of an action under this section, order that the property in respect of which the action has been taken be turned over to the Minister for safe-keeping and conservation pending final disposition of the action.
- (8) **Permit to export.**—The Minister shall, on receipt of a copy of an order of a court made under subsection (5), issue a permit authorizing any person authorized by the reciprocating State on behalf of which the action was taken to export the property in respect of which the order was made to that State.
- (9) **Limitations inapplicable.**—Section 39 of the *Federal Court Act* does not apply in respect of any action taken under this section.

DESIGNATION OF CULTURAL PROPERTY

38. Designation of cultural property.—For the purposes of article 1 of the *Convention on the means of prohibiting and preventing the illicit import. export and transfer of ownership of cultural property*, any object included in the Control List is hereby designated by Canada as being of importance for archaeology, prehistory, history, literature, art or science.

REGULATIONS

- **39. Regulations.**—The Governor in Council, on the recommendation of the Minister and the Secretary of State for External Affairs, may make regulations
 - (a) prescribing the information, documentation and undertakings to be furnished by applicants for permits under this Act, the procedure to be followed in applying for and in issuing permits under this Act, the terms and conditions applicable to them and the duration of such permits;
 - (b) prescribing the circumstances in which information may be required from persons to whom permits have been issued under this Act and the type of information that may be so required;
 - (c) prescribing the purposes for which an object may be removed from Canada for a limited period of time for the purpose of paragraph 7(c) and the length of time for which it may be so removed; and
 - (d) prescribing classes of manuscripts, original documents, archives, photographic positives and negatives, films and sound recordings for the purpose of section 14.

OFFENCES AND PUNISHMENT

40. Export or attempt to export.—No person shall export or attempt to export from Canada any object included in the Control List except under the authority of and in accordance with a permit issued under this Act.

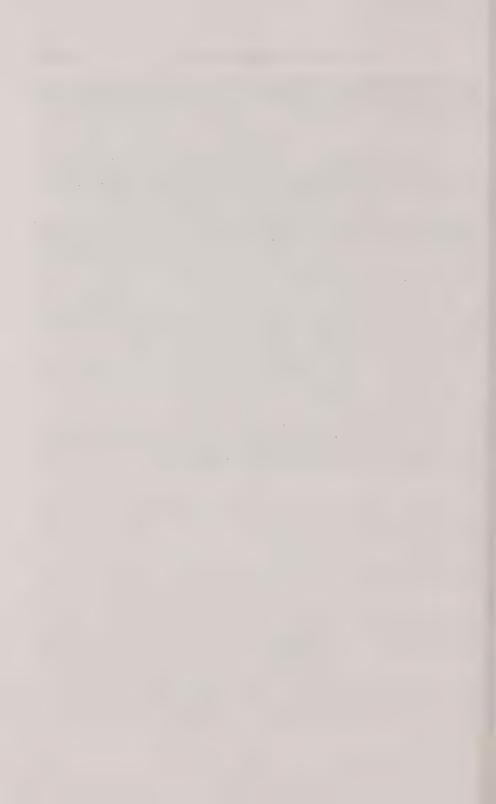
- **41.** No transfer of permits.—No person who is authorized under a permit issued under this Act to export an object from Canada shall transfer the permit to or allow it to be used by a person who is not so authorized.
- **42.** False information.—No person shall wilfully furnish any false or misleading information or knowingly make any misrepresentation
 - (a) in an application for a permit under this Act;
 - (b) for the purpose of procuring the issue of a permit under this Act; or
 - (c) in connection with the use of a permit issued under this Act or the disposition of any object to which such permit relates.
- **43. Import or attempt to import foreign cultural property.**—No person shall import or attempt to import into Canada any property that it is illegal to import into Canada under subsection 37(2).
- **44.** (1) **Export or attempt to export.**—No person shall export or attempt to export from Canada any property in respect of which an action has been instituted under subsection 37(3) while the action is being considered.
- (2) **Idem.**—No person shall export or attempt to export from Canada any property in respect of which an order has been made under subsection 37(5) except under the authority of and in accordance with a permit issued by the Minister under subsection 37(8).
- **45.** (1) **Offences and punishment.**—Every person who contravenes any of the provisions of sections 40 to 44 is guilty of an offence and liable
 - (a) on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both; or
 - (b) on conviction on indictment to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding five years or to both.
- (2) Limitation period.—A prosecution under paragraph (1)(a) may be instituted at any time within but not later than three years after the time when the subject-matter of the complaint arose.
- **46.** Officers, etc., of corporations.—Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on summary conviction or on conviction on indictment to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.
- 47. Venue.—Any proceedings in respect of an offence under this Act may be instituted, tried or determined at the place in Canada where the offence was committed or at the place in Canada in which the person charged with the offence is, resides or has an office or place of business at the time of institution of the proceedings.
- **48.** (1) **Evidence.**—The original or a copy of a bill of lading, customs documents, commercial invoice or other document (in this section called a "shipping document") is admissible in evidence in any prosecution under this Act in relation to the sending or shipping of an object where it appears from the shipping document that
 - (a) the object was sent or shipped from Canada or came into Canada;
 - (b) a person, as shipper, consignor or consignee, sent or shipped the object from Canada or brought the object into Canada; or
 - (c) the object was sent or shipped to a particular destination or person.

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(2) **Proof of the facts.**—In the absence of evidence to the contrary, a shipping document that is admissible in evidence under subsection (1) is proof of any of the facts set out in paragraph (1)(a), (b) or (c) that appear from the shipping document.

GENERAL

- **49.** Other lawful obligations.—An export permit or other permit to export issued under this Act does not affect the obligation of any person to obtain any licence, permit or certificate to export that may be required under any other law or to pay any tax, duty, toll or other sum required by any law to be paid in respect of the export of any goods.
- **50.** Customs officers' duties.—An officer, as defined in the *Customs Act*, before permitting the export or import of any object that the officer has reason to suspect is being exported or imported in contravention of any of the provisions of this Act or the regulations, shall satisfy himself that the exporter or importer has not contravened any of the provisions of this Act or the regulations and that all requirements thereof have been complied with in respect of that object. R.S.C. 1985, c. 1 (2nd Supp.) s. 213(2), (4).
- **51. Application of powers under the** *Customs Act.*—All officers, as defined in the *Customs Act*, have, with respect to any object to which this Act applies, all the powers they have under the *Customs Act* with respect to the export or import of goods and all the provisions of the *Customs Act* and regulations thereunder respecting search, detention, forfeiture and condemnation apply, with such modifications as the circumstances require,
 - (a) to any objects tendered for export or import, exported or imported, or otherwise dealt with contrary to the provisions of this Act and the regulations; and
 - (b) to all documents relating to objects described in paragraph (a). R.S.C. 1985, c. 1 (2nd Supp.), s. 213(2), (4).
- **52. Report to Parliament.**—As soon as practicable after receiving, pursuant to section 34, the report of the Chairman of the Review Board, the Minister shall prepare and lay before Parliament a report of the operations under this Act for the fiscal year to which the report of the Chairman relates and shall include therewith the report of the Chairman.



CUSTOMS AND EXCISE OFFSHORE APPLICATION ACT

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CUSTOMS AND EXCISE OFFSHORE APPLICATION ACT

R.S.C. 1985, c. C-53, as am. R.S.C. 1985, c. 1 (2nd Supp.), ss. 213(1) and (3).

SHORT TITLE

1. Short title.—This Act may be cited as the *Customs and Excise Offshore Application Act*.

INTERPRETATION

- 2. (1) Definitions.—In this Act,
- "British ship".—"British ship" has the same meaning as in the Canada Shipping Act;
- "Canadian lessee".—"Canadian lessee" means a lessee that is an individual, a corporation or a group referred to in the definition "Canadian-owned" and that carries on business in Canada;
- "Canadian-owned".—"Canadian-owned" means wholly owned by any of the following individuals, corporations or groups carrying on business in Canada:
 - (a) an individual who is a resident of Canada within the meaning of section 250 of the *Income Tax Act*,
 - (b) a corporation incorporated in Canada under federal or provincial law, or
 - (c) a group comprised of individuals or corporations or both at least one of the members of which is a person referred to in paragraph (a) or (b);
- "Canadian ship".—"Canadian ship" has the same meaning as in the Canada Shipping Act;
- "continental shelf".—"continental shelf" means the seabed and subsoil of those submarine areas that extend beyond the territorial sea throughout the natural prolongation of the land territory of Canada to the outer edge of the continental margin or to a distance of two hundred nautical miles from the inner limits of the territorial sea, whichever is the greater, or that extend to such other limits as are prescribed pursuant to subsection (3);
- "designated goods".—"designated goods" means
 - (a) artificial islands, ships, vessels, installations, structures or apparatus, including drilling rigs, drilling ships, production platforms, storage vessels, storage tanks, docks, caissons and pipelines, permanently or temporarily attached to or resting on the continental shelf for the exploration, development, production or transportation of the mineral or other non-living natural resources thereof,
 - (b) ships, vessels, equipment, structures, apparatus or conveyances used for the construction, erection or servicing of any artificial island, ship, vessel, installation, structure or apparatus referred to in paragraph (a) or for the transportation of goods between any such thing and a point in Canada or between any such things, and
 - (c) goods for use or consumption on any artificial island, ship, vessel, installation, structure, apparatus, equipment or conveyance referred to in paragraph (a) or (b);
- "federal customs laws".—"federal customs laws" includes
 - (a) Acts of Parliament,
 - (b) regulations within the meaning of the Statutory Instruments Act, and
 - (c) rules of law applicable in connection with those Acts or regulations,

that relate to customs or excise, whether those Acts, regulations or rules come into force before or after June 30, 1983 and, for greater certainty but without restricting the generality of the foregoing, includes the following Acts, namely, the Anti-dumping Act, chapter A-15 of the Revised Statutes of Canada, 1970, Customs Act, Customs Tariff, Excise Act, Excise Tax Act, Export and Import Permits Act and Importation of Intoxicating Liquors Act;

"internal waters".—"internal waters" has the same meaning as in the Customs Act;

"lease".—"lease" includes charter;

"renewal".—"renewal", in respect of a lease, includes the extension of the lease and the exercise of any option to continue the lease;

"territorial sea".—"territorial sea" means the territorial sea of Canada as determined in accordance with the *Territorial Sea and Fishing Zones Act*;

"warehouse".—"warehouse" has the same meaning as in the Customs Act.

- (2) **Presumption.**—Designated goods shall be deemed to be Canadian-owned if they are held under a lease by an individual, corporation or group referred to in the definition "Canadian-owned" in subsection (1) that wholly owned the goods immediately before the lessor owned them.
- (3) **Regulations.**—The Governor in Council may make regulations prescribing seaward limits of the continental shelf or any portion thereof for the purpose of the definition "continental shelf" in subsection (1). R.S.C. 1985, c. 1 (2nd Supp.), s. 213(3).

CUSTOMS JURISDICTION

- 3. (1) Application of federal customs laws to designated goods.—Subject to sections 5 to 8, federal customs laws apply in respect of goods on their arrival within the limits of the continental shelf for use as designated goods as if those goods were for use or consumption in Canada, and for those purposes references in federal customs laws to importation of goods into Canada shall be deemed to include bringing goods within the limits of the continental shelf for use as designated goods.
- (2) **Relocation of goods for use as designated goods.**—Goods in respect of which all duties and taxes are paid under federal customs laws and that are moved directly from one place to another within the limits of the continental shelf or from a place in Canada to a place within the limits of the continental shelf, for use as designated goods, shall be treated under federal customs laws as if they are moved from one place to another in Canada.
- (3) **Relocation of designated goods.**—Designated goods in respect of which all duties and taxes are paid under federal customs laws and that are moved directly from a place within the limits of the continental shelf to a place in Canada shall be treated under federal customs laws as if they are moved from one place to another in Canada.

INFORMATION AND DOCUMENTATION

- **4.** (1) **Information and documentation.**—The Deputy Minister of National Revenue may require from any person, within such reasonable time as the Deputy Minister stipulates, the production of any book, record, writing or other document or any information that he deems necessary for ascertaining whether any of sections 5 to 10 apply in any particular case.
- (2) Offence.—Every person who fails to comply with a requirement of the Deputy Minister of National Revenue under subsection (1) is guilty of an offence punishable on summary conviction.

ACQUIRED RIGHTS

Goods For Use on Site

- 5. (1) Goods for use on site.—Subject to this section and section 8, section 3 does not apply in respect of goods for use as designated goods that, on June 30, 1983,
 - (a) were within the limits of the continental shelf,
 - (b) were ships stores or were in warehouse or storage in Canada, or
 - (c) are imported for temporary use in Canada,

when the goods are used or consumed within the limits of the continental shelf.

- (2) **Leased goods.**—Subject to section 8, section 3 does not apply in respect of goods for use as designated goods that are under lease pursuant to a written contract, that were not Canadian-owned on June 30, 1983 and that, on that date,
 - (a) were within the limits of the continental shelf,
 - (b) were ships stores or were in warehouse or storage in Canada, or
 - (c) are imported for temporary use in Canada,

throughout the term of the lease to the first Canadian lessee or any renewal thereof or, where the lease has no fixed term, for a period of twelve months after June 30, 1983, if the lease or any renewal thereof was entered into prior to January 6, 1983 and the goods are used or consumed within the limits of the continental shelf.

(3) Where exemption period expires.—On the expiration of the exemption period provided by subsection (2), section 3 applies in respect of the goods referred to in that subsection as if those goods were arriving within the limits of the continental shelf for use as designated goods. R.S.C. 1985, c. 1 (2nd Supp.), s. 213(1).

Goods Under Prior Order

- **6.** (1) **Goods under prior order.**—Subject to this section and section 8, section 3 does not apply in respect of goods for use as designated goods that are brought within the limits of the continental shelf after June 30, 1983 pursuant to a written contract entered into prior to January 6, 1983, when the goods are used or consumed within the limits of the continental shelf.
- (2) **Leased goods.**—Subject to section 8, section 3 does not apply in respect of goods for use as designated goods that
 - (a) are under lease pursuant to a written contract entered into prior to January 6, 1983,
 - (b) are not Canadian-owned, and
 - (c) are brought within the limits of the continental shelf after June 30, 1983,

throughout the term of the lease to the first Canadian lessee or any renewal thereof, excluding renewals entered into on or after January 6, 1983, or, where the lease has no fixed term, for a period of twelve months after the day the goods are brought within the limits of the continental shelf, if the goods are used or consumed within the limits of the continental shelf.

(3) **Application.**—Subsections (1) and (2) do not apply in respect of goods for use as designated goods that are brought within the limits of the continental shelf or that are under lease, pursuant to a written contract entered into prior to January 6, 1983, unless the goods are

brought within the limits of the continental shelf within twelve months after the date that the persons acquiring the goods pursuant to the contract take possession of the goods.

- (4) **Idem.**—Subsection (1) applies to any successor in title to any goods for use as designated goods that are referred to in that subsection when the goods are used or consumed within the limits of the continental shelf.
- (5) Where exemption period expires.—On the expiration of the exemption period provided by subsection (2), section 3 applies in respect of the goods referred to in that subsection as if those goods were arriving within the limits of the continental shelf for use as designated goods.

Special Rules

- 7. Five year successive operation.—Where, after June 30, 1983, goods referred to in section 5 or 6, other than goods under lease that are not Canadian-owned, are used exclusively for a period of five successive years after June 30, 1983
 - (a) within the limits of the continental shelf,
 - (b) in the territorial sea, or
 - (c) in the internal waters,

those goods shall, after that five year period, be deemed to be duty and tax paid goods under federal customs laws.

- **8. Goods removed and returned.**—Where goods referred to in section 5 to 6 are removed from Canada or from a place within the limits of the continental shelf to a place outside Canada and the continental shelf, section 3 applies in respect of the goods if
 - (a) they are returned to a place within the limits of the continental shelf having been advanced in value or having been improved in condition by any means or combined with any other goods outside Canada and the continental shelf; or
 - (b) they are returned to a place within the limits of the continental shelf after five years following the day of their removal.

Ships

- **9.** (1) Canadian ships in coasting trade.—Canadian ships, the product of a country entitled to the benefits of the British Preferential Tariff or the product of the United Kingdom of Great Britain and Northern Ireland, the Channel Islands, the Isle of Man, the Republic of Ireland or Hong Kong, that, on June 30, 1983, are engaged in the coasting trade of Canada pursuant to Part X of the *Canada Shipping Act* shall be deemed to be duty and tax paid ships under federal customs laws.
- (2) **British ships in coasting trade.**—British ships, other than Canadian ships, the products of a country entitled to the benefits of the British Preferential Tariff or the product of the United Kingdom of Great Britain and Northern Ireland, the Channel Islands, the Isle of Man, the Republic of Ireland or Hong Kong, that, on June 30, 1983, are under lease and are engaged in the coasting trade of Canada pursuant to Part X of the *Canada Shipping Act* shall be deemed to be duty and tax paid ships under federal customs laws throughout the term of the lease to the first Canadian lessee or any renewal thereof if the lease or renewal was entered into prior to January 6, 1983.
 - 10. (1) Canadian ships under prior order.—Canadian ships, the product of a country

entitled to the benefits of the British Preferential Tariff or the product of the United Kingdom of Great Britain and Northern Ireland, the Channel Islands, the Isle of Man, the Republic of Ireland or Hong Kong, ordered pursuant to a written contract entered into prior to January 6, 1983 for the purpose of engaging in the coasting trade of Canada pursuant to Part X of the Canada Shipping Act, shall be deemed to be duty and tax paid ships under federal customs laws.

- (2) **British ships under prior lease.**—British ships, other than Canadian ships, the product of a country entitled to the benefits of the British Preferential Tariff or the product of the United Kingdom of Great Britain and Northern Ireland, the Channel Islands, the Isle of Man, the Republic of Ireland or Hong Kong, under lease pursuant to a written contract entered into prior to January 6, 1983 for the purpose of engaging in the coasting trade of Canada pursuant to Part X of the *Canada Shipping Act*, shall be deemed to be duty and tax paid ships under federal customs laws throughout the term of the lease to the first Canadian lessee or any renewal thereof, excluding renewals entered into on or after January 6, 1983.
- (3) **Application.**—Subsections (1) and (2) do not apply in respect of a ship ordered or under lease pursuant to a written contract entered into prior to January 6, 1983, unless the shop has been released under the *Customs Act* within twelve months after the date that the persons acquiring the ship pursuant to the contract take possession of the ship. R.S.C. 1985, c. 1 (2nd Supp.), s. 213(1).



CUSTOMS TARIFF

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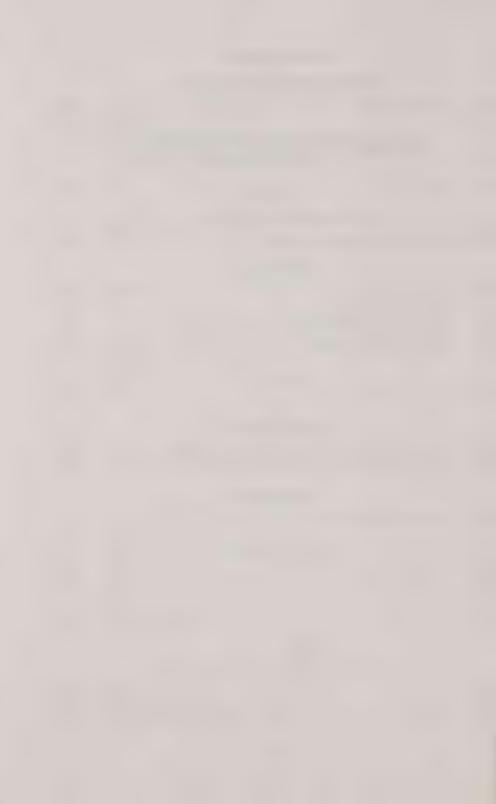
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CUSTOMS TARIFF

R.S.C. 1985, c. 41 (3rd Supp.), as am. R.S.C. 1985, c. 9 (4th Supp.); R.S.C. 1985, c. 18 (4th Supp.); R.S.C. 1985, c. 47 (4th Supp.), s. 52; S.C. 1988, c. 65, ss. 82–112; S.C. 1989, c. 18; S.C. 1990, c. 45, ss. 22–32; S.C. 1991, c. 40, s. 42; S.C. 1992, c. 28,* ss. 32–40; S.C. 1993, c. 25,** ss. 1–28, 97 and 98; S.C. 1993, c. 39, ss. 1–2; S.C. 1993, c. 44, ss. 109–136; S.C. 1993, c. 46, s. 6; S.C. 1994, c. 3, s. 1; and S.C. 1994, c. 13, s. 7(1)(e).

An Act respecting the imposition of duties of customs and other charges, to give effect to the International Convention on the Harmonized Commodity Description and Coding System, to provide relief against the imposition of certain duties of customs or other charges, to provide for other related matters and to amend or repeal certain Acts in consequence thereof

SHORT TITLE

1. [Short title].—This Act may be cited as the *Customs Tariff*.

INTERPRETATION

- 2. (1) Definitions.—In this Act,
- "Canada-United States Free Trade Agreement".—"Canada-United States Free Trade Agreement" has the meaning given to the term "Agreement" by the Canada-United States Free Trade Agreement Implementation Act;
- "country".—"country", unless the context otherwise requires, includes a dependent territory of a country;
- "Deputy Minister".—"Deputy Minister" means the Deputy Minister of National Revenue;
- "Minister".—"Minister" means the Minister of National Revenue;
- "NAFTA country".—"NAFTA country" means a party to the North American Free Trade Agreement;
- "North American Free Trade Agreement".—"North American Free Trade Agreement" has the meaning given to the term "Agreement" by the North American Free Trade Agreement Implementation Act;
- "prescribed".—"prescribed" means
 - (a) in the case of a form, the information to be given on a form or the manner of filing a form, authorized by the Minister, and,
 - (b) in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation;

^{*}The various coming-into-force provisions and provisions re application of S.C. 1992, c. 28 are quite complex. Reference should be made to the provisions of ss. 32 to 40 of S.C. 1992, c. 28 re application. *Note the coming-into-force provisions of S.C. 1993, c. 25, s. 30.

- "specified rate".—"specified rate" means the rate of interest, expressed as a percentage per year, equal to 6% per year plus the prescribed rate;
- (2) Goods imported from a NAFTA country.—For the purposes of this Act, goods are imported from a NAFTA country if they are shipped directly to Canada from the NAFTA country. S.C. 1988, c. 65, s. 82; S.C. 1992, c. 28, s. 32; S.C. 1993, c. 44, s. 109; S.C. 1994, c. 13, s. 7(1)(e).
- 2.1 Definition of "United States".—For the purposes of this Act, "United States" means
 - (a) the customs territory of the United States, including the fifty states of the United States, the District of Columbia and Puerto Rico,
 - (b) the foreign trade zones located in the United States and Puerto Rico, and
 - (c) any areas beyond the territorial sea of the United States within which, in accordance with international law and its domestic laws, the United States may exercise rights with respect to the seabed and subsoil and the natural resources thereof. S.C. 1988, c. 65, s. 82; S.C. 1993, c. 44, s. 110.
 - **2.2 Definition of "Mexico".**—For the purposes of this Act, "Mexico" means
 - (a) the states of the Federation and the Federal District;
 - (b) the islands, including the reefs and keys, in adjacent seas;
 - (c) the islands of Guadalupe and Revillagigedo situated in the Pacific Ocean;
 - (d) the continental shelf and the submarine shelf of such islands, keys and reefs;
 - (e) the waters of the territorial seas, in accordance with international law, and its interior maritime waters;
 - (f) the space located above the national territory, in accordance with international law; and
 - (g) any areas beyond the territorial seas of Mexico within which, in accordance with international law, including the *United Nations Convention on the Law of the Sea*, and its domestic law, Mexico may exercise rights with respect to the seabed and subsoil and their natural resources. S.C. 1993, c. 44, s. 111.
- **3. Words and expressions in** *Customs Act.*—Unless otherwise provided, words and expressions used in this Act and defined in subsection 2(1) of the *Customs Act* have the meanings assigned to them by that subsection.
- **4. Definition of "for use in".**—The expression "for use in", wherever it occurs in a tariff item in Schedule I or a code in Schedule II in relation to goods, means, unless the context otherwise requires, that the goods must be wrought into, attached to or incorporated into other goods as provided for in that tariff item or code.
- **5. Percentage rates.**—For the purposes of this Act, where a rate of customs duty on goods is expressed as a percentage rate, the customs duties imposed on the goods shall be calculated by applying the rate in accordance with section 44 of the *Customs Act*.
- **6. Weight of goods.**—For the purposes of this Act, where a rate of customs duty on goods is based on the weight of the goods, the customs duties imposed on the goods shall, unless otherwise specified, be calculated on the basis of the net weight of the goods.
- 7. (1) **Abbreviations.**—For the purposes of Schedules I and II, the abbreviations "BPT", "NZ", "AU" and "UST" refer, respectively, to "British Preferential Tariff", "New Zealand", "Australia" and "United States Tariff".

- (2) **Idem.**—For the purposes of Schedules I and II, the abbreviations "MT" and "MUST" refer, respectively, to "Mexico Tariff" and "Mexico-United States Tariff". S.C. 1988, c. 65, s. 83; S.C. 1993, c. 44, s. 112.
 - 8. Elements of schedules.—For the purposes of the schedules to this Act,
 - (a) "Section", "Chapter" and "sub-Chapter" refer, respectively, to the portion of Schedule I that bears that appellation;
 - (b) "heading" refers to any four-digit number, or the first four digits of any number, set out in the column "Tariff Item" in Schedule I and the enumeration of goods or other matters accompanying that number;
 - (c) "subheading" refers to any six-digit number, or the first six digits of any number, set out in the column "Tariff Item" in Schedule I and the enumeration of goods or other matters accompanying that number;
 - (d) "tariff item" refers to any eight-digit number set out in the column "Tariff Item" in Schedule I and the enumeration of goods or other matters accompanying that number; and
 - (e) "code" refers to any number set out in the column "Code" in Schedule II, IV, V or VII and to the enumeration of goods or other matters accompanying that number.
- **9.** Territorial sea and internal waters.—For greater certainty, any proclamation issued pursuant to subsection 2(2) of the *Customs Act* applies so as to restrict temporarily, for the purposes of this Act, the extent of the territorial sea or the internal waters.
- 10. Classification of goods in Schedule I.—The classification of imported goods under a tariff item in Schedule I shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System and the Canadian Rules set out in that Schedule.
- 11. Guides to interpretation.—In interpreting the headings and subheadings in Schedule I, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System and the Explanatory Notes to the Harmonized Commodity Description and Coding System, as amended from time to time, published by the Customs Co-operation Council, established by the Convention establishing a Customs Co-operation Council, done at Brussels on December 15, 1950 and to which Canada is a party.
- 12. (1) Goods of a class or kind made in Canada.—For the purposes of this Act, goods shall be deemed not to be of a class or kind of goods made or produced in Canada unless goods of that class or kind are made or produced in Canada in substantial quantities.
- (2) **Order.**—The Governor in Council may, by order, for the purposes of subsection (1), provide that the quantities, in order to be substantial, shall be sufficient to supply such percentage of the normal Canadian consumption of the goods as is fixed by the order.

Amendment of Schedules

- **12.1 Amendment of schedules.**—The Governor in Council may, on the recommendation of the Minister of Finance, by order, amend Schedule I, II, IV, V, VI or VII to give effect to
 - (a) any amendment to the Harmonized Commodity Description and Coding System established by the International Convention on the Harmonized Commodity Description and Coding system or any advice on the interpretation of that System approved by the Customs Co-operation Council; or
 - (b) any modification to an agreement or arrangement relating to international trade to which the Government of Canada is a party. S.C. 1993, c. 25, s. 1.

PART I

CUSTOMS DUTIES

Origin of Goods and Entitlement to Tariff Treatment

- 13. (1) Meaning of "originate".—Subject to any regulations made under subsection (2), for the purposes of this Act, goods originate in a country if the whole of the value of the goods is produced in that country.
- (2) **Rules of origin regulations.**—The Governor in Council may, on the recommendation of the Minister of Finance, make regulations respecting the origin of goods including, in particular, but without limiting the generality of the foregoing, regulations
 - (a) deeming goods, the whole or a portion of the value of which is produced outside a country, to originate in that country for the purposes of this Act, subject to such conditions, if any, as are specified in the regulations; and
 - (b) for determining when goods are entitled to the benefit of the Most-Favoured-Nation Tariff, British Preferential Tariff or General Preferential Tariff or other tariff treatment under this Act, other than tariff treatment provided for under subsection (3).
- (3) **Entitlement regulations.**—The Governor in Council, on the recommendation of the Minister of Finance, may make regulations for determining, in accordance with the North American Free Trade Agreement, when goods are entitled to the benefit of the United States Tariff, Mexico Tariff or Mexico-United States Tariff.
- (4) **Effect of regulations.**—Regulations made under this section, or any amendments to those regulations, may have effect during any period before this subsection comes into force. S.C. 1988, c. 65, s. 84; S.C. 1993, c. 44, s. 113.

14 to 16. [Repealed S.C. 1988, c. 65, s. 84]

Direct Shipment and Transshipment

- 17. Direct shipment.—For the purposes of this Act, goods are shipped directly to Canada from another country when the goods are conveyed to Canada from that other country on a through bill of lading to a consignee in Canada.
- **18.** (1) **Transshipment.**—For the purposes of this Act, where goods are exported to Canada from any country but are transshipped in any intermediate country, the goods shall be deemed not to have been shipped directly to Canada from the first mentioned country if
 - (a) the goods do not remain under customs transit control in the intermediate country;
 - (b) the goods undergo any operation in the intermediate country other than unloading, reloading, splitting up of loads or operations required to keep the goods in good condition;
 - (c) the goods enter into trade or consumption in the intermediate country; or
 - (d) the goods remain in temporary storage in the intermediate country for a period exceeding the period prescribed.
- (2) **Regulations.**—The Governor in Council may make regulations prescribing a period for the purposes of paragraph (1)(d).

Imposition of Customs Duties

19. (1) Imposition of customs duties.—Subject to this Act and the Customs Act and any

regulation or order made thereunder, there shall be levied and collected on all goods enumerated or referred to in Schedule I, when such goods are imported, and paid in accordance with the *Customs Act*, customs duties at the rates set out in Schedule I or section 46 that are applicable to those goods.

- (2) **Exceptions.**—The rates of customs duty set out in Schedule I and section 46 and the customs duties imposed by this Act are subject to such increases, reductions, removals or other exceptions as may be specified in this or any other Act of Parliament, or in any regulation or order made thereunder.
- **20.** (1) **Imposition of additional customs duties.**—Subject to this Act and the *Customs Act* and any regulation or order made thereunder, there shall be levied and collected on all goods subject to excise, when such goods are imported, and paid in accordance with the *Customs Act*, an additional customs duty equal to the excise duty that would be levied thereon under the *Excise Act* if
 - (a) the goods were manufactured or produced in Canada; and
 - (b) in the case of goods of tariff item No. 2207.20.19, subsections 1(2) to (6) of Part I of the schedule to the *Excise Act* did not apply to the goods.
- (2) **Definition of "goods subject to excise".**—In subsection (1), "goods subject to excise" means the following goods:
 - (a) beer or malt liquor, within the meaning of the *Excise Act*, of heading No. 22.03 or of tariff item No. 2202.90.10 or 2206.00.70,
 - (b) spirits, within the meaning of the *Excise Act*, of an alcoholic strength by volume exceeding 22.9 per cent volume, of tariff item No. 2204.21.29, 2204.29.29, 2205.10.20, 2205.90.20, 2206.00.20, 2206.00.69 or 2206.00.90,
 - (c) spirits, within the meaning of the *Excise Act*, of heading No. 22.07 or 22.08, other than of tariff item No. 2207.20.11, 2207.20.90, 2208.10.00, 2208.90.50 or 2208.90.91, and
 - (d) cigars or manufactured tobacco, within the meaning of the *Excise Act*, of tariff item No. 2402.10.10, 2402.10.90, 2402.20.00, 2403.10.00, 2403.91.90, 2403.99.10 or 2403.99.90.

classified under that heading or tariff item, as the case may be, or with the container in which the goods are imported. R.S.C. 1985, c. 9 (4th Supp.), s. 1; S.C. 1989, c. 18, s. 1.

- **21.** (1) **Schedule III.**—Subject to this Act and any regulation or order made thereunder, goods that originate in a country listed in Schedule III benefit, in whole or in part, from the tariff treatment indicated in that Schedule for that country.
- (2) **Most favourable treatment.**—Where, in accordance with this Act, goods are entitled to the benefit of more than one tariff treatment, the treatment that shall be applied to those goods is the treatment that is the most favourable for those goods.
- (3) Where rate is not specified.—Where the symbol "X" appears in the column "General Preferential Tariff" of Schedule I or II in relation to goods, the rate of customs duty that applies to those goods is the rate set out with respect to those goods in the column "Most-Favoured-Nation Tariff" of that Schedule.
- (4) Where there is no rate.—The symbol "N/A", where it appears in the column "Most-Favoured-Nation Tariff", "General Preferential Tariff" or "United States Tariff" of a tariff item in Schedule I or in the column "Most-Favoured-Nation Tariff" or "General Preferential Tariff" of a code in Schedule II, indicates that there is no Most-Favoured-Nation Tariff,

General Preferential Tariff or United States Tariff rate of customs duty, as the case may be, for that tariff item or code.

(5) Idem.—The symbol "N/A", where it appears in the column "Mexico Tariff", "Mexico-United States Tariff" or "NAFTA Staging Category" of a tariff item in Schedule I, indicates that there is no Mexico Tariff or Mexico-United States Tariff rate of customs duty or tariff reduction in stages as specified in subsection 25.2(3) and (3.1), as the case may be, for that tariff item. S.C. 1988, c. 65, s. 85; S.C. 1989, c. 18, s. 2; S.C. 1993, c. 44, s. 114.

Most-Favoured-Nation Tariff

- **22. Application of tariff.**—Subject to sections 23 and 24, goods that originate in a country listed in Schedule III as a beneficiary of the Most-Favoured-Nation Tariff are entitled to the rates of customs duty set out with respect to those goods in the Most-Favoured-Nation Tariff in Schedule I.
- 23. (1) Extension or withdrawal of benefit.—The Governor in Council may, on the recommendation of the Minister of Finance, by order,
 - (a) extend the benefit of the Most-Favoured-Nation Tariff to any or all goods that originate in a country to which the General Tariff applies;
 - (b) withdraw the benefit of the Most-Favoured-Nation Tariff from any or all goods that originate in a country that is a beneficiary of that tariff and make those goods subject to the General Tariff; and
 - (c) amend Schedule III to the extent required to indicate the tariff treatment of the country to which the order applies.
 - (2) Contents of order.—An order made pursuant to subsection (1) shall
 - (a) specify the date on which the order becomes effective;
 - (b) where the order extends in part the benefit of the Most-Favoured-Nation Tariff, indicate the goods to which the benefit of that tariff is extended by the order; and
 - (c) where the order withdraws in part the benefit of the Most-Favoured-Nation Tariff, indicate the goods that are made subject to the General Tariff by the order.
- **24.** Conditions.—Goods are entitled to the benefit of the Most-Favoured-Nation Tariff only if the following conditions are met:
 - (a) proof of origin of the goods is given in accordance with the *Customs Act*;
 - (a.1) the goods are entitled, in accordance with any regulations made pursuant to section 13, to the benefit of the Most-Favoured-Nation Tariff; and
 - (b) the goods are shipped directly to Canada, with or without transhipment, from a country that is a beneficiary of that tariff. S.C. 1988, c. 65, s. 86; S.C. 1993, c. 44, s. 115.
- **25. Exemption.**—The Governor in Council may, by order, exempt goods from any condition set out in section 24 on such terms and conditions as may be specified in the order.

United States Tariff, Mexico Tariff and Mexico-United States Tariff

- **25.1 Definition of "base rate".**—In section 25.2, "base rate", with respect to goods enumerated or referred to in Schedule I, means
 - (a) if the goods are entitled to the benefit of the United States Tariff, the rate of customs duty set out with respect to those goods in the United States Tariff of that Schedule;

- (b) if the goods are entitled to the benefit of the Mexico Tariff, the rate of customs duty set out with respect to those goods in the Mexico Tariff of that Schedule; and
- (c) if the goods are entitled to the benefit of the Mexico-United States Tariff, the rate of customs duty set out with respect to those goods in the Mexico-United States Tariff of that Schedule. S.C. 1988, c. 65, s. 87; S.C. 1993, c. 44, s. 116.
- **25.2** (1) **Application of tariff.**—Subject to this section, goods that originate in the United States are entitled to the rates of customs duty set out with respect to those goods in the United States Tariff of Schedule I.
- (1.01) **Suspension of subsection (1).**—The operation of subsection (1) is suspended during the period in which subsection (1.02) is in force.
- (1.02) **Application of United States Tariff.**—Subject to this section, goods that are entitled to the benefit of the United States Tariff are entitled to the rates of customs duty set out with respect to those goods in the United States Tariff of Schedule I.
- (1.1) **Application of Mexico Tariff.**—Subject to this section, goods that are entitled to the benefit of the Mexico Tariff are entitled to the rates of customs duty set out with respect to those goods in the Mexico Tariff of Schedule I.
- (1.2) Application of Mexico-United States Tariff.—Subject to this section, goods that are entitled to the benefit of the Mexico-United States Tariff are entitled to the rates of customs duty set out with respect to those goods in the Mexico-United States Tariff of Schedule I.
- (1.3) **Application of subsections** (2) and (3).—Subsections (2) and (3) apply in respect of each rate of customs duty in the United States Tariff, the Mexico Tariff and the Mexico-United States Tariff of Schedule I, unless the reduction to free of that rate is otherwise provided for in a tariff item or a footnote to a tariff item or a note, supplementary note or subheading note to a chapter of Schedule I.
- (2) **Staging for U.S. Tariff.**—The rates of customs duty set out in the United States Tariff of Schedule I shall be reduced to free in stages as follows:
 - (a) effective on January 1, 1994, four fifths of the base rate applicable to those goods;
 - (b) effective on January 1, 1995, three fifths of the base rate applicable to those goods;
 - (c) effective on January 1, 1996, two fifths of the base rate applicable to those goods;
 - (d) effective on January 1, 1997, one fifth of the base rate applicable to those goods; and
 - (e) effective on January 1, 1998, free.
- (3) Staging for Mexico Tariff and Mexico-U.S. Tariff.—Where "A", "B", "B1", "B+" or "C" appears in the column "NAFTA Staging Category" of Schedule I in relation to goods enumerated or referred to in it, the rate of customs duty set out with respect to those goods in the Mexico-Tariff or the Mexico-United States Tariff of that Schedule shall be reduced to free in stages as follows:
 - (a) where "A" appears, the rate of customs duty that applies to those goods is, effective on the coming into force of subsections (1.1) and (1.2), free;
 - (b) where "B" appears, the rate of customs duty that applies to those goods is
 - (i) effective on the coming into force of subsections (1.1) and (1.2), four fifths of the base rate applicable to those goods,
 - (ii) effective on January 1, 1995, three fifths of the base rate applicable to those goods,
 - (iii) effective on January 1, 1996, two fifths of the base rate applicable to those goods,

- (iv) effective on January 1, 1997, one fifth of the base rate applicable to those goods, and
- (v) effective on January 1, 1998, free;
- (c) where "B1" appears, the rate of customs duty that applies to those goods is
 - (i) effective on the coming into force of subsections (1.1) and (1.2), five sixths of the base rate applicable to those goods,
 - (ii) effective on January 1, 1995, four sixths of the base rate applicable to those goods,
 - (iii) effective on January 1, 1996, three sixths of the base rate applicable to those goods,
 - (iv) effective on January 1, 1997, two sixths of the base rate applicable to those goods,
 - (v) effective on January 1, 1998, one sixth of the base rate applicable to those goods, and
 - (vi) effective on January 1, 1999, free;
- (d) where "B+" appears, the rate of customs duty that applies to those goods is
 - (i) effective on the coming into force of subsections (1.1) and (1.2), eight tenths of the base rate applicable to those goods,
 - (ii) effective on January 1, 1996, seven tenths of the base rate applicable to those goods,
 - (iii) effective on January 1, 1997, six tenths of the base rate applicable to those goods,
 - (iv) effective on January 1, 1998, five tenths of the base rate applicable to those goods,
 - (v) effective on January 1, 1999, four tenths of the base rate applicable to those goods,
 - (vi) effective on January 1, 2000, three tenths of the base rate applicable to those goods, and
 - (vii) effective on January 1, 2001, free; and
- (e) where "C" appears, the rate of customs duty that applies to those goods is
 - (i) effective on the coming into force of subsections (1.1) and (1.2), nine tenths of the base rate applicable to those goods,
 - (ii) effective on January 1, 1995, eight tenths of the base rate applicable to those goods,
 - (iii) effective on January 1, 1996, seven tenths of the base rate applicable to those goods,
 - (iv) effective on January 1, 1997, six tenths of the base rate applicable to those goods,
 - (v) effective on January 1, 1998, five tenths of the base rate applicable to those goods,
 - (vi) effective on January 1, 1999, four tenths of the base rate applicable to those goods,
 - (vii) effective on January 1, 2000, three tenths of the base rate applicable to those goods,
 - (viii) effective on January 1, 2001, two tenths of the base rate applicable to those goods,
 - (ix) effective on January 1, 2002, one tenth of the base rate applicable to those goods, and
 - (x) effective on January 1, 2003, free.
- (3.1) Idem.—Where "D" appears in the column "NAFTA Staging Category" of Sched-

ule I in relation to goods enumerated or referred to in it, the rate of customs duty set out with respect to those goods in the Mexico Tariff or the Mexico-United States Tariff of that Schedule is free.

- (4) **Rounding amounts.**—Where a specific rate of customs duty applicable to goods by virtue of subsection (2) or (3) contains a fraction of one tenth of a cent, the rate shall be rounded downward to the nearest one tenth of a cent.
- (5) **Idem.**—Where a percentage rate of customs duty applicable to goods by virtue of subsection (2) or (3) contains a fraction of one tenth of one per cent, the rate shall be rounded downward to the nearest one tenth of one per cent.
- (5.1) **Conditions.**—Goods are entitled to the benefit of the United States Tariff, Mexico Tariff or Mexico-United States Tariff only if the following conditions are met:
 - (a) proof of origin of the goods is given in accordance with the Customs Act; and
 - (b) the goods are entitled, in accordance with any regulations made pursuant to section 13, to the benefit of that tariff.
- (5.2) **Suspension of operation of subsection** (6).—The operation of subsection (6) is suspended during the period in which subsection (5.1) is in force.
- (6) **Conditions.**—Goods are entitled to the benefit of the United States Tariff only if the following conditions are met:
 - (a) proof of origin of the goods is given in accordance with the Customs Act;
 - (b) the goods are entitled, in accordance with any regulations made pursuant to subsection 13(2), to the benefit of the United States Tariff; and
 - (c) the goods are shipped directly to Canada, with or without transhipment, from the United States.
- (7) Extension of United States Tariff and Mexico Tariff.—Notwithstanding any other provision of this Act and for the purpose of giving effect to Appendix 6 of Annex 300-B of Chapter Three of the North American Free Trade Agreement, the Minister of Finance may, by order, extend the benefit of the United States Tariff or the Mexico Tariff to any imported goods under such conditions as may be specified in the order. S.C. 1988, c. 65, s. 87; S.C. 1993, c. 44, s. 117.
- **25.3** No other Acts to apply.—Subject to any order made pursuant to subsection 25.2(7), but notwithstanding any other provision of this Act, or any other Act of Parliament or any regulation or order made thereunder, the benefit of the United States Tariff, the Mexico Tariff or the Mexico-United States Tariff does not apply, either generally or specifically or directly or indirectly, to goods to which the benefit thereof does not specifically extend under section 25.2. S.C. 1988, c. 65, s. 87; S.C. 1993, c. 44, s. 118.

British Preferential Tariff

- **26. Application of tariff.**—Subject to sections 27 and 29, goods that originate in a country listed in Schedule III as a beneficiary of the British Preferential Tariff are entitled to the British Preferential Tariff rates of customs duty, if any, set out with respect to those goods in Schedule I.
- 27. (1) Extension or withdrawal of benefit.—The Governor in Council may, on the recommendation of the Minister of Finance, by order,

- (a) extend the benefit of the British Preferential Tariff to any or all goods that originate in a country that is a beneficiary of the Most-Favoured-Nation Tariff;
- (b) withdraw the benefit of the British Preferential Tariff from any or all goods that originate in a country that is a beneficiary of that tariff; and
- (c) amend Schedule III to the extent required to indicate the tariff treatment of the country to which the order applies.
- (2) Contents of order.—An order made pursuant to subsection (1) shall
- (a) specify the date on which the order becomes effective;
- (b) where the order extends in part the benefit of the British Preferential Tariff, indicate the goods to which the benefit of that tariff is extended by the order; and
- (c) where the order withdraws in whole or in part the benefit of the British Preferential Tariff, indicate the goods to which the benefit of the Most-Favoured-Nation Tariff or General Tariff, as the case may be, extends as a consequence of the order.
- **28.** (1) More favourable tariff treatment.—The Governor in Council may, on the recommendation of the Minister of Finance, by order,
 - (a) extend to any or all goods that originate in a country that is a beneficiary of the British Preferential Tariff a more favourable tariff treatment; and
 - (b) withdraw the benefit of a more favourable tariff treatment from any or all goods that originate in a country to which the benefit of that more favourable tariff treatment has been extended pursuant to paragraph (a).
 - (2) Contents of order.—An order made pursuant to subsection (1) shall
 - (a) specify the date on which the order becomes effective;
 - (b) where the order extends in part the benefit of a more favourable tariff treatment, indicate the goods to which the benefit of that tariff treatment is extended by the order; and
 - (c) where the order withdraws in whole or in part the benefit of a more favourable tariff treatment, indicate the goods to which the benefit of the British Preferential Tariff, Most-Favoured-Nation Tariff or General Tariff, as the case may be, extends as a consequence of the order.
- **29.** Conditions.—Goods are entitled to the benefit of the British Preferential Tariff or to the benefit of a more favourable tariff treatment provided for by section 28 only if the following conditions are met:
 - (a) proof of origin of the goods is given in accordance with the *Customs Act*;
 - (a.1) the goods are entitled, in accordance with any regulations made pursuant to section 13, to the benefit of the British Preferential Tariff or that more favourable tariff treatment; and
 - (b) the goods are shipped directly to Canada, without transhipment, from a country that is a beneficiary of that tariff or of that more favourable tariff treatment or from such country as may be designated by order of the Governor in Council. S.C. 1988, c. 65, s. 88; S.C. 1992, c. 1, s. 144; S.C. 1993, c. 44, s. 119.
- **30.** Exception re direct shipment.—Goods that originate in Lesotho, Botswana or Swaziland shall, where the goods are shipped from the Republic of South Africa directly to Canada without transhipment, be deemed to be shipped directly to Canada from the country in which the goods originate.

31. Exemption.—The Governor in Council may, by order, exempt goods from any condition set out in section 29 on such terms and conditions as may be specified in the order.

General

- 32. (1) Approval by Parliament.—Where an order is made pursuant to paragraph 23(1)(b), 27(1)(b) or 28(1)(b), the order shall cease to have any force or effect with respect to any period following the one hundred and eightieth day after the date on which it becomes effective or, if Parliament is not then sitting, the fifteenth day next thereafter that Parliament is sitting, unless not later than that day the order is approved by resolution adopted by both Houses of Parliament.
- (2) **Meaning of "sitting day".**—For the purposes of subsection (1), a day on which either House of Parliament sits shall be deemed to be a sitting day.
- (3) **Rates restored.**—On the commencement of the period with respect to which an order referred to in subsection (1) ceases to have any force or effect, the benefit of any tariff treatment withdrawn by the order shall be restored.
- 33. Goods in transit.—If, before the date on which an order made pursuant to paragraph 23(1)(b), 27(1)(b), 28(1)(b), 36(1)(b) or 38(1)(b), section 49 or 52, paragraph 54(1)(a) or subsection 59(2), 59.1(1) or (11), 60(1) or (6.1), 60.1(1), 60.11(2) or 60.4(1) becomes effective, goods were in transit to Canada, the goods are entitled to the benefit of the tariff treatment that was applicable to those goods before that date if the order specifies that the tariff treatment shall apply thereto. S.C. 1988, c. 65, s. 89; S.C. 1993, c. 44, s. 120.
- **34.** (1) **Change of name.**—Where the name of a country listed in Schedule III is changed, the Governor in Council may, by order, amend Schedule III in order to reflect the change of name.
- (2) **Effect.**—No amendment under subsection (1) shall affect the tariff treatment of the country with respect to which the amendment is made.

General Preferential Tariff and Least Developed Developing Country Tariff Treatment

- **35.** (1) **Application of tariff.**—Subject to sections 36 and 40, goods that originate in a country listed in Schedule III as a beneficiary of the General Preferential Tariff are entitled to the rates of customs duty set out with respect to those goods in the General Preferential Tariff in Schedule I.
- (2) **Substitution of rates, etc.**—The Governor in Council may, on the recommendation of the Minister of Finance, by order,
 - (a) substitute a rate of customs duty for the symbol "X" wherever it appears in the General Preferential Tariff in Schedule I or in the column "General Preferential Tariff" in Schedule II; and
 - (b) reduce or remove any rate of customs duty set out in the General Preferential Tariff in Schedule I or in the column "General Preferential Tariff" in Schedule II.
- **36.** (1) Extension and withdrawal of benefit.—The Governor in Council may, on the recommendation of the Minister of Finance, by order,
 - (a) extend the benefit of the General Preferential Tariff to any or all goods that originate in a country that is a beneficiary of the British Preferential Tariff or Most-Favoured-Nation

Tariff where, in the opinion of the Governor in Council, that country is a developing country;

- (b) withdraw the benefit of the General Preferential Tariff from any or all goods that originate in a country that is a beneficiary of that tariff; and
- (c) amend Schedule III to the extent required to indicate the tariff treatment of the country to which the order applies.
- (2) Contents of order.—An order made pursuant to subsection (1) shall
- (a) specify the date on which the order becomes effective;
- (b) where the order extends in part the benefit of the General Preferential Tariff, indicate the goods to which the benefit of that tariff is extended by the order; and
- (c) where the order withdraws in whole or in part the benefit of the General Preferential Tariff, indicate the goods to which the benefit of the British Preferential Tariff or Most-Favoured-Nation Tariff, as the case may be, extends as a consequence of the order.
- **37.** Duty-free goods.—Subject to sections 38 and 40, the rates of customs duty under Schedule I shall be free in respect of goods
 - (a) that originate in a country that is listed in Schedule III as a beneficiary of the General Preferential Tariff and of the Least Developed Developing Country tariff treatment; and
 - (b) for which there are General Preferential Tariff rates of customs duty.
- 38. (1) Extension or withdrawal of benefit.—The Governor in Council may, on the recommendation of the Minister of Finance, by order,
 - (a) designate as a least developed developing country any country that is a beneficiary of the General Preferential Tariff and extend the benefit of free rates of customs duty to any or all goods that originate in that country and for which there are General Preferential Tariff rates of customs duty;
 - (b) withdraw the benefit of free rates of customs duty from any or all goods that originate in a country that is a beneficiary thereof pursuant to section 37 or paragraph (a); and
 - (c) amend Schedule III to the extent required to indicate the tariff treatment of the country to which the order applies.
 - (2) Contents of order.—An order made pursuant to subsection (1) shall
 - (a) specify the date on which the order becomes effective;
 - (b) where the order extends in part the benefit of free rates of customs duty, indicate the goods to which that benefit is extended by the order; and
 - (c) where the order withdraws in whole or in part the benefit of free rates of customs duty, indicate the goods to which the benefit of the General Preferential Tariff extends as a consequence of the order.
- 39. No other Acts to apply.—Notwithstanding any other provision of this Act or any other Act of Parliament or any regulation or order made thereunder, the benefit of the General Preferential Tariff under section 35 or of free rates of customs duty under section 37 does not apply, either generally or specifically or directly or indirectly, to goods that originate in any country to which the benefit thereof does not specifically extend under section 35 or 37 or has not been specifically extended pursuant to paragraph 36(1)(a) or 38(1)(a), as the case may be. S.C. 1988, c. 65, s. 90.
 - 40. Conditions.—Goods are entitled to the benefit of the General Preferential Tariff or to

the benefit of free rates of customs duty provided for by section 37 or paragraph 38(1)(a) only if the following conditions are met:

- (a) proof of origin of the goods is given in accordance with the Customs Act;
- (a.1) the goods are entitled, in accordance with any regulations made pursuant to section 13, to the benefit of the General Preferential Tariff or those free rates of customs duty; and
- (b) the goods are shipped directly to Canada, with or without transhipment, from the country in which the goods originate. S.C. 1988, c. 65, s. 91; S.C. 1993, c. 44, s. 121.
- **41.** Exception.—The Governor in Council may, by order, exempt goods from the condition set out in paragraph 40(a) requiring proof of origin of goods or from the condition set out in paragraph 40(b) on such terms and conditions as may be specified therein.

Tariff Rate Quota

- 42. Definitions.—In this section and sections 43 and 44,
- "Board".- [Repealed]
- "tariff rate quota".—"tariff rate quota" means, in respect of one or more countries entitled to the benefits of the General Preferential Tariff, a limitation on the quantity of the goods from those countries that may be imported in any period of twelve consecutive months at the General Preferential Tariff rate:
- "Tribunal".— "Tribunal" means the Canadian International Trade Tribunal established by subsection 3(1) of the *Canadian International Trade Tribunal Act*. R.S.C. 1985, c. 47 (4th Supp.), s. 52.
- **43. Tariff rate quota.**—The Governor in Council may, on the recommendation of the Minister of Finance, by order, apply to any country or countries, as the case may be, a tariff rate quota in respect of any goods for a period specified in the order. R.S.C. 1985, c. 47 (4th Supp.), s. 52; S.C. 1989, c. 18, s. 3.
- **44.** Tariff rate where tariff rate quota exceeded.—Goods imported in excess of the tariff rate quota applicable to the goods are subject to the tariff treatment that would be applicable to those goods if they were not entitled to the benefit of the General Preferential Tariff.
- **45. Expiration date.**—Sections 35 to 44 shall expire on June 30, 2004 or on such earlier day as may be fixed by order of the Governor in Council. S.C. 1994, c. 3, s. 1.

General Tariff

- **46. Application of tariff.**—The following goods are subject to a rate of customs duty, in this Act referred to as the "General Tariff", equal to thirty-five per cent:
 - (a) goods that originate in a country that is not listed in Schedule III;
 - (b) goods that originate in a country that is listed in Schedule III but that fail to meet the conditions for entitlement to the benefit of any tariff treatment under any other section; and
 - (c) goods to which the General Tariff applies pursuant to any other provision of this Act or any regulation or order made thereunder. S.C. 1988, c. 65, s. 92.

Special Tariff Treatments

NEW ZEALAND

- **47. Application of tariff treatment.**—Subject to section 48, goods that originate in New Zealand are entitled to the British Preferential Tariff rates of customs duty, if any, or the special rates of customs duty for New Zealand, if any, set out with respect to those goods in Schedule I.
- **48.** Conditions.—Goods are entitled to the benefit of the tariff treatment provided for by section 47 only if the following conditions are met:
 - (a) proof of origin of the goods is given in accordance with the Customs Act;
 - (a.1) the goods are entitled, in accordance with any regulations made pursuant to section 13, to the benefit of that tariff treatment:
 - (b) the goods are imported in the condition in which they were finished in New Zealand; and
 - (c) the goods are shipped directly to Canada, with or without transhipment, from New Zealand. S.C. 1988, c. 65, s. 93; S.C. 1993, c. 44, s. 122.
- **49.** Withdrawal of benefit.—The Governor in Council may, by order, withdraw the benefit of the tariff treatment provided for by section 47 from any goods that originate in New Zealand if the goods are not shipped directly, without transhipment, from New Zealand to Canada.

AUSTRALIA

- **50.** Application of tariff treatment.—Subject to section 51, goods that originate in Australia are entitled to the British Preferential Tariff rates of customs duty, if any, or the special rates of customs duty for Australia, if any, set out with respect to those goods in Schedule I.
- **51.** Conditions.—Goods are entitled to the benefit of the tariff treatment provided for by section 50 only if the following conditions are met:
 - (a) proof of origin of the goods is given in accordance with the Customs Act;
 - (a.1) the goods are entitled, in accordance with any regulations made pursuant to section 13, to the benefit of that tariff treatment; and
 - (b) the goods are shipped directly to Canada, with or without transhipment, from Australia. S.C. 1988, c. 65, s. 94; S.C. 1993, c. 44, s. 123.
- **52.** Withdrawal of benefit.—The Governor in Council may, by order, withdraw the benefit of the tariff treatment provided for by section 50 from any goods that originate in Australia if the goods are not shipped directly, without transhipment, from Australia to Canada.

COMMONWEALTH CARIBBEAN COUNTRIES

- **53. Application of tariff treatment.**—Subject to sections 54 to 57, the rates of customs duty under Schedule I shall be free in respect of goods that originate in a country that is listed in Schedule III as a beneficiary of the Commonwealth Caribbean Countries tariff treatment.
- **54.** (1) **Withdrawal of benefit.**—The Governor in Council may, on the recommendation of the Minister of Finance, by order,
 - (a) withdraw the benefit of free rates of customs duty provided for by section 53 from any

or all goods that originate in a country that is listed in Schedule III as a beneficiary of the Commonwealth Caribbean Countries tariff treatment and make those goods subject to the tariff treatment that would be applicable to those goods if they were not entitled to free rates of customs duty; and

- (b) amend Schedule III to the extent required to indicate the tariff treatment of the country to which the order applies.
- (2) Contents of order.—An order made pursuant to subsection (1) shall
- (a) specify the date on which the order becomes effective; and
- (b) where the order withdraws in part the benefit of free rates of customs duty provided for by section 53, indicate the goods to which the order applies.
- **55.** No other Act to apply.—Notwithstanding any other Act of Parliament or any regulation or order made thereunder, the benefit of free rates of customs duty provided for by section 53 does not apply, either generally or specifically or directly or indirectly, to goods that originate in any country to which that benefit does not specifically extend under that section.
- **56.** (1) **Exceptions.**—The following goods are not entitled to the benefit of free rates of customs duty provided for by section 53:
 - (a) goods of Chapters 50 to 65;
 - (b) goods of heading No. 42.02, other than leather luggage of tariff item No. 4202.11.00 or 4202.91.90, or goods of heading No. 46.02, other than vegetable fibre baskets of tariff item No. 4602.10.92; and
 - (c) goods of tariff item No. 2710.00.20, 2905.11.00, 3403.11.10, 3403.19.10 or 4203.10.00.
- (2) **Definition of "luggage".**—In this section, "luggage" means suit-cases, vanity cases, executive cases, briefcases, school satchels, travelling-bags, toilet bags and other similar containers. S.C. 1993, c. 25, s. 2.
- **57.** Conditions.—Goods are entitled to the benefit of free rates of customs duty provided for by section 53 only if the following conditions are met:
 - (a) proof of origin of the goods is given in accordance with the Customs Act;
 - (a.1) the goods are entitled, in accordance with any regulations made pursuant to section 13, to the benefit of those free rates of customs duty; and
 - (b) the goods are shipped directly to Canada, with or without transhipment, from the country in which the goods originate. S.C. 1988, c. 65, s. 95; S.C. 1993, c. 44, s. 124.
- **58.** Exemption.—The Governor in Council may, by order, exempt goods from the condition set out in paragraph 57(a) requiring proof of origin of goods or from the condition set out in paragraph 57(b) on such terms and conditions as may be specified therein.

Special Measures

59. (1) **Definitions.**—In this section,

- "government".—"government", in relation to any country other than Canada, means the government of that country and includes
 - (a) any provincial, state, municipal or other local or regional government in that country.
 - (b) any person, agency or institution acting for, on behalf of, or under the authority of any

law passed by, the government of that country or that provincial, state, municipal or other local or regional government, and

- (c) any association of sovereign states of which that country is a member;
- "trade agreement".—"trade agreement" means any agreement or arrangement relating to international trade to which the Government of Canada is a party.
- (2) Governor in Council may make orders.—Notwithstanding this Act or any other Act of Parliament, the Governor in Council may, on the recommendation of the Minister of Finance and the Secretary of State for External Affairs, by order, for the purpose of enforcing Canada's rights under a trade agreement in relation to a country or of responding to acts, policies or practices of the government of a country that, as a result of discrimination or otherwise, adversely affect or lead directly or indirectly to adverse effects on trade in Canadian goods or services, do any one or more of the following things:
 - (a) suspend or withdraw rights or privileges granted by Canada to any country under a trade agreement or an Act of Parliament;
 - (b) make any goods that originate in any country or are entitled to the benefit of any tariff treatment provided for by any regulations made pursuant to section 13, or any class of those goods, subject to a surtax in an amount, over and above the rates of customs duty specified in this Act, in any other Act of Parliament or in any regulation or order thereunder for those goods or that class of goods;
 - (c) include on the Import Control List established under section 5 of the *Export and Import Permits Act* any goods that originate in any country or are entitled to the benefit of any tariff treatment provided for by any regulations made pursuant to section 13; and
 - (d) establish, in respect of any goods or class of goods that originate in any country or would, but for this paragraph, be entitled to the benefit of any tariff treatment provided for by any regulations made pursuant to section 13, rates of customs duty that vary from time to time as the quantity of those goods or that class of goods imported during a period specified in the order equals or exceeds totals specified in the order.
 - (3) [Repealed]
- (4) **Removal from Import Control List.**—Where, by an order made pursuant to subsection (2), any goods are included on the Import Control List referred to in paragraph (2)(c), those goods shall be deemed to have been removed from that List when the order ceases to have effect or is revoked.
- (5) **Order tabled in Parliament.**—The Minister of Finance shall cause a copy of any order made pursuant to subsection (2) to be laid before Parliament on any of the first fifteen days after the making thereof that either House of Parliament is sitting.
- (6) **Regulations.**—The Governor in Council may make such regulations as are deemed necessary for carrying out the provisions of this section and for its enforcement. S.C. 1993, c. 25, s. 3; S.C. 1993, c. 44, s. 125.

Global Emergency Measures

- **59.1** (1) **Surtax under certain conditions.**—Where at any time it appears to the satisfaction of the Governor in Council, as a result of
 - (a) a report of the Minister of Finance, or
 - (b) an inquiry made by the Canadian International Trade Tribunal under section 20 or 26 of the Canadian International Trade Tribunal Act,

that goods of any kind, that are imported from any country, are being imported into Canada under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive goods, the Governor in Council may, on the recommendation of the Minister of Finance, by order, make any goods of that kind that are imported from any country specified in the order, when imported into Canada or any region or part thereof specified in the order during the period that the order is in effect, subject to a surtax

- (c) at a rate specified in the order, or
- (d) at a rate specified in the order that varies from time to time as the quantity of such goods imported into Canada or that region or part thereof during a period specified in the order equals or exceeds totals specified in the order,

but no such rate shall, at the maximum, exceed the rate that in the opinion of the Governor in Council is sufficient to prevent further such injury or the threat of such injury.

- (1.1) **Minister's report.**—No report of the Minister of Finance may be made under paragraph (1)(a) unless
 - (a) there are, in the opinion of that Minister, critical circumstances; or
 - (b) the report relates to perishable agricultural goods.
- (2) Exception for certain fresh fruits or vegetables in certain cases.—No order may be made under subsection (1), as a result of a report of the Minister of Finance, with respect to any fresh fruit or vegetable imported from a NAFTA country and referred to in subsection 60.2(1) that may be subject to a temporary duty under that subsection.
- (3) **Exception for NAFTA goods.**—Notwithstanding subsection (1), no order under subsection (1) may be made applicable to goods of any kind imported from a NAFTA country unless it appears to the satisfaction of the Governor in Council
 - (a) pursuant to a report under section 20 or 29 of the Canadian International Trade Tribunal Act, or
 - (b) on the basis of a report of the Minister of Finance,

that the quantity of such goods

- (c) imported from that country represents a substantial share of total imports of goods of the same kind, and
- (d) imported from that country alone or, in exceptional circumstances, together with goods of the same kind imported from each other NAFTA country, contributes importantly to serious injury or threat thereof to domestic producers of like or directly competitive goods.
- (4) **Period and revocation.**—Every order made pursuant to subsection (1)
- (a) shall, subject to this section, remain in effect for such period, not exceeding three years, as is specified in the order; and
- (b) may, notwithstanding any other provision of this section, be revoked at any time by the Governor in Council on the recommendation of the Minister of Finance, unless, prior to that time, a resolution praying that the order be revoked has been adopted by both Houses of Parliament pursuant to subsection (9).
- (4.1) **Inquiry.**—Where an order is made under subsection (1) on the basis of a report of the Minister of Finance, the Governor in Council shall forthwith refer the matter to the Canadian International Trade Tribunal for an inquiry under paragraph 20(a) of the Canadian International Trade Tribunal Act.

- (5) **Duration of order.**—Where an order is made pursuant to subsection (1) on the basis of a report of the Minister of Finance, the order ceases to have effect on the expiration of the one hundred and eightieth day from the day on which the order is made if Parliament is then sitting, or if Parliament is not then sitting, on the expiration of the fifteenth sitting day after that day, unless, before the order so ceases to have effect,
 - (a) it is approved by a resolution adopted by both Houses of Parliament, or
 - (b) the Canadian International Trade Tribunal reports to the Governor in Council pursuant to an inquiry made under section 20 or 26 of the *Canadian International Trade Tribunal Act* that the goods described in the report of the Minister of Finance are being imported into Canada from the country named in the report under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive goods,

in which case the order shall remain in effect for such period, not exceeding three years, as is specified in the order.

- (6) **Idem.**—Where an order that applies to goods imported from a NAFTA country is made pursuant to subsection (1) on the basis of a report of the Minister of Finance, the order ceases to have effect with respect to those goods on the expiration of the one hundred and eightieth day from the day on which the order is made if Parliament is then sitting, or, if Parliament is not then sitting, on the expiration of the fifteenth sitting day after that day, unless, before the order so ceases to have effect,
 - (a) it is approved by a resolution adopted by both Houses of Parliament, or
 - (b) the Canadian International Trade Tribunal reports to the Governor in Council pursuant to the Canadian International Trade Tribunal Act that the quantity of the goods
 - (i) imported from the NAFTA country, as described in the report of the Minister of Finance, is substantial in comparison with the quantity of goods of the same kind imported from other countries, and
 - (ii) imported from the NAFTA country alone or, in exceptional circumstances, together with goods of the same kind imported from each other NAFTA country, contributes importantly to serious injury or threat thereof to domestic producers of like or directly competitive goods,

in which case the order shall remain in effect for such period, not exceeding three years, as is specified in the order.

- (7) **Idem.**—Where an order that applies to goods imported from a NAFTA country is made pursuant to subsection (1) on the basis of a report of the Minister of Finance, that order shall be revoked by the Governor in Council if the Governor in Council is satisfied on the basis of a report of the Canadian International Trade Tribunal, made pursuant to the *Canadian International Trade Tribunal Act*, that the quantity of goods
 - (a) imported from that country is not substantial in comparison with the quantity of goods of the same kind imported from other countries; or
 - (b) imported from that country alone or, in exceptional circumstances, together with goods of the same kind imported from each other NAFTA country, does not contribute importantly to the serious injury or threat thereof to domestic producers of like or directly competitive goods.
- (8) **Meaning of "sitting day".**—For the purposes of subsections (5) and (6), a day on which either House of Parliament sits shall be deemed to be a sitting day.
 - (9) Resolution of Parliament revoking order.—Notwithstanding anything in this sec-

tion, where an order made pursuant to subsection (1) remains in effect by reason of any provision of this section and a resolution praying that it be revoked is adopted by both Houses of Parliament, the order shall cease to have effect on the day that the resolution is adopted or, if the adopted resolution specifies a day on which the order shall cease to have effect, on that specified day.

- (10) **Notice in** *Canada Gazette*.—Where an order made pursuant to subsection (1)
- (a) remains in effect by reason of paragraph (5)(a) or (b) or (6)(a) or (b), or
- (b) ceases to have effect by reason of a resolution of both Houses of Parliament,

the Minister of Finance shall cause a notice to that effect to be published in the Canada Gazette.

- (11) **Surtax on NAFTA goods.**—Where an order has been made under subsection (1) imposing a surtax that does not apply to goods imported from a NAFTA country because the quantity of such goods is not substantial in comparison with the quantity of goods of the same kind imported from other countries or because such goods imported from the NAFTA country alone or, in exceptional circumstances, together with goods of the same kind imported from each other NAFTA country, do not contribute importantly to the serious injury or threat thereof to domestic producers of like or directly competitive goods and the Governor in Council is satisfied, on the recommendation of the Minister of Finance made as a result of an inquiry by the Canadian International Trade Tribunal, that
 - (a) there has been a surge of such goods imported from the NAFTA country on or after the coming into force of the order, and
 - (b) as a result thereof, the effectiveness of the imposition of the surtax is being undermined,

the Governor in Council may, by order, make any goods of that kind that are imported from the NAFTA country, when imported into Canada or any region or part thereof specified in the order during the period that the order is in effect, subject to a surtax at a rate specified in the order, or at a rate specified in the order that varies from time to time as the quantity of such goods imported into Canada or that region or part thereof during a period specified in the order equals or exceeds totals specified in the order, but no such rate shall, at the maximum, exceed the rate that, in the opinion of the Governor in Council, is sufficient to prevent the undermining of the effectiveness of the order under subsection (1).

- (12) **Rate.**—The rate of a surtax imposed on goods imported from a NAFTA country under subsection (1) or (11) need not be the same rate as that imposed under subsection (1) on goods of the same kind imported from any other country, but in no case shall exceed the rate of surtax imposed under subsection (1) on goods of the same kind imported from any other country.
- (13) **Limitation.**—Where the Governor in Council makes an order under subsection (1) that applies to goods imported from a NAFTA country by virtue of subsection (3) or makes an order under subsection (11), the Governor in Council shall, in respect of goods imported from a NAFTA country, be guided by the provisions of subparagraph 5(b) of Article 802 of the North American Free Trade Agreement.
- (14) **Meaning of "contribute importantly" and "surge".** —For the purposes of this section, "contribute importantly" and "surge" have the meaning given those expressions by Article 805 of the North American Free Trade Agreement.
 - (15) Expiration.—Subsection (2) shall cease to be in force on December 31, 2008.

- (16) **Regulations.**—The Governor in Council may make regulations for carrying out the purposes of this section and may, by order, suspend the surtax or rate in whole or in part from application to the goods of any country or any class of such goods.
- (17) **Decision of Governor in Council final.**—The decision of the Governor in Council is final on any question that may arise regarding the application of the surtax or rate imposed pursuant to this section.
- (18) **Suspension of operation of section 60.**—The operation of section 60 is suspended during the period in which this section is in force. S.C. 1993, c. 44, s. 126.
- **60.** (1) **Surtax under certain conditions.**—Where at any time it appears to the satisfaction of the Governor in Council, as a result of
 - (a) a report of the Minister of Finance, or
 - (b) an inquiry made by the Canadian International Trade Tribunal under section 20 or 26 of the Canadian International Trade Tribunal Act,
 - (c) [Repealed]

that goods of any kind, that originate in any country, are being imported into Canada under such conditions as to cause or threaten serious injury to Canadian producers of like or directly competitive products, the Governor in Council may, on the recommendation of the Minister of Finance, by order, make any goods of that kind that originate in any country specified in the order, when imported into Canada or any region or part thereof specified in the order during the period that the order is in effect, subject to a surtax

- (d) at a rate specified in the order, or
- (e) at a rate specified in the order that varies from time to time as the quantity of such goods imported into Canada or that region or part thereof during a period specified in the order equals or exceeds totals specified in the order,

but no such rate shall, at the maximum, exceed the rate that in the opinion of the Governor in Council is sufficient to prevent further such injury or the threat of such injury.

- (1.1) Exception for certain fresh fruits or vegetables in certain cases.—No order may be made under subsection 60(1), as a result of a report of the Minister of Finance, with respect to any fresh fruit or vegetable originating in the United States and referred to in subsection 60.2(1) that may be subject to a temporary duty under that subsection.
- (1.2) Exception for United States goods.—Notwithstanding subsection (1), no order under subsection (1) may be made applicable to goods of any kind originating in the United States unless it appears to the satisfaction of the Governor in Council
 - (a) pursuant to a report under section 20 or 29 of the $\it Canadian International Trade Tribunal Act$, or
 - (b) on the basis of a report of the Minister of Finance,

that the quantity of such goods is substantial in comparison with the quantity of goods of the same kind originating in other countries and that the importation of such goods originating in the United States contributes importantly to serious injury or threat thereof to Canadian producers of like or directly competitive goods.

- (2) **Period and revocation.**—Every order made pursuant to subsection (1)
- (a) shall, subject to this section, remain in effect for such period, not exceeding three years, as is specified in the order; and
- (b) may, notwithstanding any other provision of this section, be revoked at any time by the

Governor in Council on the recommendation of the Minister of Finance, unless, prior to that time, a resolution specifying a day on which the order shall cease to have effect has been adopted by both Houses of Parliament pursuant to subsection (3) or (3.1).

- (3) **Duration of order.**—Where an order is made pursuant to subsection (1) on the basis of a report of the Minister of Finance, the order ceases to have effect on the expiration of the one hundred and eightieth day from the day on which the order is made if Parliament is then sitting or, if Parliament is not then sitting, on the expiration of the fifteenth sitting day after that day, unless before the order so ceases to have effect
 - (a) it is approved by a resolution adopted by both Houses of Parliament, or
 - (b) the Canadian International Trade Tribunal reports to the Governor in Council pursuant to an inquiry made under section 20 or 26 of the *Canadian International Trade Tribunal Act* that the goods described in the report of the Minister of Finance are still being imported into Canada from the country named in the report under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products,
 - (c) [Repealed]

in which case the order shall remain in effect for the period referred to in paragraph (2)(a).

- (3.1) **Idem.**—Where an order that applies to goods originating in the United States is made pursuant to subsection (1) on the basis of a report of the Minister of Finance, the order ceases to have effect with respect to those goods on the expiration of the one hundred and eightieth day from the day on which the order is made if Parliament is then sitting, or, if Parliament is not then sitting, on the expiration of the fifteenth sitting day after that day, unless, before the order so ceases to have effect,
 - (a) it is approved by a resolution adopted by both Houses of Parliament, or
 - (b) the Canadian International Trade Tribunal reports to the Governor in Council pursuant to the Canadian International Trade Tribunal Act that the quantity of the goods originating in the United States described in the report of the Minister of Finance is substantial in comparison with the quantity of goods of the same kind originating in other countries, and that such goods originating in the United States are still contributing importantly to serious injury or threat thereof to Canadian producers of like or directly competitive products,

in which case the order shall remain in effect for the period referred to in paragraph (2)(a).

- (3.2) **Idem.**—Where an order that applies to goods originating in the United States is made pursuant to subsection (1) on the basis of a report of the Minister of Finance, that order shall be revoked by the Governor in Council if the Governor in Council is satisfied on the basis of a report of the Canadian International Trade Tribunal, made pursuant to the Canadian International Trade Tribunal Act, that the quantity of goods originating in the United States is not substantial in comparison with the quantity of goods of the same kind originating in other countries, or that the goods originating in the United States do not contribute importantly to the serious injury or threat thereof to Canadian producers of like or directly competitive products.
- (4) **Meaning of "sitting day".**—For the purposes of subsections (3) and (3.1), a day on which either House of Parliament sits shall be deemed to be a sitting day.
- (5) **Resolution of Parliament revoking order.**—Notwithstanding anything in this section, where an order made pursuant to subsection (1) remains in effect by reason of any provision of this section and a resolution praying that it be revoked is adopted by both Houses of Parliament, the order shall cease to have effect on the day that the resolution is adopted or, if

the adopted resolution specifies a day on which the order shall cease to have effect, on that specified day.

- (6) Notice in Canada Gazette.—Where an order made pursuant to subsection (1)
- (a) remains in effect by reason of paragraph (3)(a), (b) or (c) or (3.1)(a) or (b), or
- (b) ceases to have effect by reason of a resolution of both Houses of Parliament,

the Minister of Finance shall cause a notice to that effect to be published in the Canada Gazette.

- (6.1) Surtax on United States goods.—Where an order has been made under subsection (1) imposing a surtax that does not apply to goods originating in the United States because the quantity of such goods is not substantial in comparison with the quantity of goods of the same kind originating in other countries or because such goods originating in the United States do not contribute importantly to the serious injury or threat thereof to Canadian producers of like or directly competitive products and it appears to the satisfaction of the Governor in Council, on a report of the Minister of Finance, that
 - (a) there has been a surge of such goods originating in the United States and imported into Canada on or after the coming into force of the order, and
 - (b) as a result thereof, the effectiveness of the imposition of the surtax is being undermined,

the Governor in Council may, by order, on the recommendation of the Minister of Finance, make any goods of that kind that originate in the United States, when imported into Canada or any region or part thereof specified in the order during the period that the order is in effect, subject to a surtax at a rate specified in the order, or at a rate specified in the order that varies from time to time as the quantity of such goods imported into Canada or that region or part thereof during a period specified in the order equals or exceeds totals specified in the order, but no such rate shall, at the maximum, exceed the rate that, in the opinion of the Governor in Council, is sufficient to prevent the undermining of the effectiveness of the order under subsection (1).

- (6.2) **Rate.**—The rate of a surtax imposed on goods originating in the United States under subsection (1) or (6.1) need not be the same rate as that imposed under subsection (1) on goods of the same kind originating in other countries.
- (6.3) **Limitation.**—Where the Governor in Council makes an order under subsection (1) that applies to goods originating in the United States by virtue of subsection (1.2) or makes an order under subsection (6.1), the Governor in Council shall, in respect of goods originating in the United States, be guided by the provisions of subparagraph 4(b) of Article 1102 of the Canada-United States Free Trade Agreement.
- (6.4) **Definition of "surge".**—For the purposes of this section, "surge" has the meaning given that term by Article 1104 of the Canada-United States Free Trade Agreement.
- (6.5) **Expiration.**—Subsection (1.1) shall cease to be in force on the expiration of twenty years after the coming into force of that subsection.
- (7) **Regulations.**—The Governor in Council may make regulations for carrying out the purposes of this section and may, by order, suspend the surtax or rate in whole or in part from application to the goods of any country or any class of such goods.
- (8) **Decision of Governor in Council final.**—The decision of the Governor in Council is final on any question that may arise regarding the application of the surtax or rate imposed pursuant to this section. R.S.C. 1985, c. 47 (4th Supp.), s. 52; S.C. 1988, c. 65, s. 96.

Bilateral Emergency Measures for U.S. Goods

- **60.1** (0.1) **Non-application.**—This section does not apply in respect of textile and apparel goods set out in Appendix 1.1 of Annex 300-B of Chapter Three of the North American Free Trade Agreement.
- (1) Order by Governor in Council.—Subject to this section, where at any time it appears to the satisfaction of the Governor in Council, as a result of an inquiry made by the Canadian International Trade Tribunal under section 19.01 or subsection 19.1(2) of the Canadian International Trade Tribunal Act or further to a complaint filed under section 23 of that Act, that goods of any kind that are entitled to the benefit of the United States Tariff are, as a result of the reduction of that Tariff, being imported into Canada in such increased quantities and under such conditions as to alone constitute a principal cause of serious injury to domestic producers of like or directly competitive goods, the Governor in Council may, on the recommendation of the Minister of Finance, by order,
 - (a) suspend, during the period that the order is in effect, any reduction of the rate of customs duties with respect to those goods that would otherwise be made after that time by virtue of subsection 25.2(2) or (3) or subsection 68(2) as provided for in codes 9600 to 9633 of Schedule II:
 - (b) in the case of goods on which a customs duty is imposed on a seasonal basis, make those goods subject to a temporary duty, over and above any other duty specified in this Act or in any other law relating to customs, at a rate specified in the order, but no such rate shall, together with the rate of customs duty specified in Schedule I that is in effect with respect to those goods at that time, exceed the Most-Favoured-Nation rate of customs duty that was in effect with respect to such goods in the season for those goods immediately prior to the coming into force of this section corresponding to the season for those goods during which the temporary duty is imposed; or
 - (c) in the case of goods other than goods referred to in paragraph (b), make those goods subject to a temporary duty, over and above any other duty specified in this Act or in any other law relating to customs, at a rate specified in the order, but no such rate shall, together with the rate of customs duty specified in Schedule I that is in effect with respect to those goods at that time, exceed the lesser of
 - (i) the Most-Favoured-Nation rate of customs duty that was in effect in respect of those goods on the day before the coming into force of this section, and
 - (ii) the Most-Favoured-Nation rate of customs duty that is in effect in respect of those goods at the time the order is made.
 - (2) Terms and conditions.—An order made pursuant to subsection (1)
 - (a) may not be made more than once during the period commencing on January 1, 1988 and ending on December 31, 1998 in respect of goods of a particular kind and, if made during that period, shall remain in effect for such period, not exceeding three years, as is specified in the order; and
 - (b) may only be made after December 31, 1998 pursuant to an agreement between the Government of Canada and the Government of the United States relating either generally or specifically to the application of subsection (1).
- (3) **Definition of "principal cause".**—In this section, "principal cause" means, in respect of a serious injury, an important cause that is no less important than any other cause of the serious injury.

- (4) Reference to customs duty in effect.—For the purposes of paragraph (1)(b), a reference to the Most-Favoured-Nation rate of customs duty in effect with respect to a fresh fruit or vegetable shall be read as a reference to
 - (a) in respect of a fresh vegetable, the rate of customs duty applicable to that vegetable as enumerated in the tariff item mentioned in Supplementary Note 2(b) in Chapter 7 of Schedule I; or
 - (b) in respect of a fresh fruit, the rate of customs duty applicable to that fruit as enumerated in the tariff item mentioned in Supplementary Note 4(b) in Chapter 8 of Schedule I. S.C. 1988, c. 65, s. 97; S.C. 1993, c. 44, s. 127.

Bilateral Emergency Measures for Mexican and MUST Goods

- **60.11** (1) Non-application.—This section does not apply in respect of textile and apparel goods set out in Appendix 1.1 of Annex 300-B of Chapter Three of the North American Free Trade Agreement.
- (2) Order by Governor in Council.—Subject to this section, where at any time it appears to the satisfaction of the Governor in Council, as a result of an inquiry made by the Canadian International Trade Tribunal under subsection 19.01(3) of the Canadian International Trade Tribunal Act or further to a complaint filed under subsection 23(1.02) of that Act, that goods of any kind that are entitled to the benefit of the Mexico Tariff or the Mexico-United States Tariff of Schedule I are, as a result of the reduction of that Tariff, being imported into Canada in such increased quantities and under such conditions as to alone constitute a principal cause of serious injury, or a threat thereof, to domestic producers of like or directly competitive goods, the Governor in Council may, on the recommendation of the Minister of Finance, by order,
 - (a) suspend, during the period that the order is in effect, any reduction of the rate of customs duty with respect to those goods that would otherwise be made after that time by virtue of section 25.2:
 - (b) in the case of goods on which a customs duty is imposed on a seasonal basis, make those goods subject to a temporary duty, over and above any other duty specified in this Act or in any other law relating to customs, at a rate specified in the order, but no such rate shall, together with the rate of customs duty specified in Schedule I that is in effect with respect to those goods at that time, exceed the Most-Favoured-Nation rate of customs duty that was in effect with respect to such goods in the season for those goods immediately before the coming into force of this section corresponding to the season for those goods during which the temporary duty is imposed; or
 - (c) in the case of goods other than goods referred to in paragraph (b), make those goods subject to a temporary duty, over and above any other duty specified in this Act or in any other law relating to customs, at a rate specified in the order, but no such rate shall, together with the rate of customs duty specified in Schedule I that is in effect in respect of those goods at that time, exceed the lesser of
 - (i) the Most-Favoured-Nation rate of customs duty that was in effect in respect of those goods on the day before the coming into force of this section, and
 - (ii) the Most-Favoured-Nation rate of customs duty that is in effect in respect of those goods at the time the order is made.
 - (3) Terms and conditions.—An order pursuant to subsection (2)
 - (a) may not be made more than once during the period commencing on the coming into

force of this section and ending on December 31, 2003 in respect of goods of a particular kind and, if made during that period, shall remain in effect for such period, not exceeding three years, as is specified in the order; and

- (b) may only be made after December 31, 2003 pursuant to an agreement between the Government of Canada and the Government of Mexico relating either generally or specifically to the application of subsection (2).
- (4) Rate of duty when order ceases to have effect.—Where an order made pursuant to subsection (2) ceases to have effect in a given calendar year,
 - (a) the rate of customs duty applicable to the goods after the order ceases to have effect and until December 31 of that year shall be the rate that would have been applicable on the first anniversary of the making of the order if the rate of customs duty had been reduced in accordance with section 25.2; and
 - (b) the rate of customs duty applicable to the goods beginning on January 1 of the year following the year in which the order ceases to have effect shall be the rate specified by the Minister of Finance pursuant to subsection (5).
- (5) **Specification of applicable rate.**—The Minister of Finance shall, by order, specify either that
 - (a) the rate referred to in paragraph (4)(b) shall be the rate of customs duty that would have been applicable on January 1 of the year following the year in which the order ceases to have effect if the rate of customs duty had been reduced in accordance with section 25.2 and the rate for subsequent years shall be reduced to free in accordance with that section; or
 - (b) the rate referred to in paragraph (4)(b) shall be the rate of customs duty that would have been applicable on the first anniversary of the making of the order and the rate shall be reduced to free in equal annual stages beginning on January 1 of the year following the year in which the order ceases to have effect and ending on the day on which the rate of customs duty for the goods would otherwise be reduced to free in accordance with section 25.2.
- (6) **Definition of "principal cause".**—In this section, "principal cause" means, in respect of a serious injury or threat thereof, an important cause that is no less important than any other cause of the serious injury or threat.
- (7) **Reference to customs duty in effect.**—For the purposes of paragraph (2)(b), a reference to the Most-Favoured-Nation rate of customs duty in effect with respect to a fresh fruit or vegetable shall be read as a reference to
 - (a) in respect of a fresh vegetable, the rate of customs duty applicable to that vegetable as enumerated in the applicable tariff item mentioned in Supplementary Note 2(b) in Chapter 7 of Schedule I; or
 - (b) in respect of a fresh fruit, the rate of customs duty applicable to that fruit as enumerated in the applicable tariff item mentioned in Supplementary Note 4(b) in Chapter 8 of Schedule I. S.C. 1993, c. 44, s. 128.

Bilateral Safeguard Measures for U.S. Fresh Fruits and Vegetables

60.2 (1) **Temporary duty on fresh fruit or vegetables.**—Notwithstanding this Act or any other Act of Parliament but subject to subsections (2) to (8), the Minister of Finance may, where the Minister of Finance is satisfied that the conditions set out in Article 702 of the

Canada-United States Free Trade Agreement for the application of a temporary duty on any fresh fruit or vegetable have been met, by order, for the purpose of implementing Canada's rights under that Agreement and subject to such terms and conditions as may be prescribed, make any fresh fruit or vegetable of heading No. 07.01, 07.02, 07.03, 07.04, 07.05, 07.06 (other than turnips), 07.07, 07.08, 07.09 (other than truffles), 08.09 or 08.10 (other than cranberries and blueberries) or subheading No. 0806.10 or 0808.20, as specified in the order, that is entitled to the benefit of the United States Tariff, when imported into Canada or any region thereof specified in the order, subject to a temporary duty, in addition to any other duty imposed under this Act, or any other law relating to customs, at a rate specified in the order.

- (2) **Maximum rate.**—No rate of temporary duty imposed under subsection (1) with respect to any fresh fruit or vegetable shall, together with any other rate of customs duty specified in Schedule I for that fresh fruit or vegetable, exceed the lesser of
 - (a) the Most-Favoured-Nation Tariff rate of customs duty that was in effect in respect of the fresh fruit or vegetable prior to the coming into force of this section in the season for that fresh fruit or vegetable corresponding to the season for that fresh fruit or vegetable during which the temporary duty is imposed, and
 - (b) the Most-Favoured-Nation Tariff rate of customs duty that is in effect in respect of the fresh fruit or vegetable at the time the order is made.
- (3) Temporary duty may be imposed only once in twelve months.—The temporary duty referred to in subsection (1) may be imposed, with respect to any fresh fruit or vegetable, only once in respect of any particular region or only once on a national basis, in any period of twelve consecutive months.
- (4) Where emergency actions taken.—No order shall be made in respect of a fresh fruit or vegetable pursuant to subsection (1) during any period in which an order made pursuant to subsection 59.1(1) or (11), 60(1) or (6.1) or 60.1(1) of this Act or subsection 5(3), (4.01) or (4.2) of the *Export and Import Permits Act* in respect of the same fresh fruit or vegetable that is entitled to the benefit of the United States Tariff is in force and any such order made pursuant to subsection (1) shall not have any force or effect during any such period.
- (5) Non-application to goods in transit.—If, before the coming into force of an order made pursuant to subsection (1), a person purchased any fresh fruit or vegetable for importation through a customs office in a region specified in the order in the expectation in good faith that the United States Tariff rate of customs duty applicable to the fresh fruit or vegetable would apply thereto and, at the time of the coming into force of the order, the goods were in transit to the purchaser in Canada, the goods are not subject to the temporary duty specified in the order.
- (6) **Revocation where conditions met.**—An order made pursuant to subsection (1) shall be revoked by the Minister of Finance where the Minister of Finance is satisfied that the conditions for the removal of the temporary duty set out in paragraph 4 of Article 702 of the Canada-United States Free Trade Agreement have been met.
- (7) **Period of order.**—Subject to subsection (8), an order made pursuant to subsection (1) shall, unless it is revoked, have effect for such period as is specified in the order.
- (8) Ceases to have effect.—An order made pursuant to subsection (1) ceases to have effect on the expiration of the one hundred and eightieth day after the day on which the order is made.
- (9) Reference to customs duty in effect.—For the purposes of the application of paragraphs (2)(a) and (b) in respect of a fresh fruit or vegetable on which a customs duty is

imposed on a seasonal basis, a reference to the Most-Favoured-Nation Tariff rate of customs duty in effect in respect of the fresh fruit or vegetable shall be read as a reference to

- (a) in respect of a fresh vegetable, the rate of customs duty applicable to that vegetable as enumerated in the tariff item mentioned in Supplementary Note 2(b) in Chapter 7 of Schedule I; or
- (b) in respect of a fresh fruit, the rate of customs duty applicable to that fruit as enumerated in the tariff item mentioned in Supplementary Note 4(b) in Chapter 8 of Schedule I.
- (10) **Regulations.**—The Governor in Council may, on the recommendation of the Minister of Finance, make regulations, consistent with the Canada-United States Free Trade Agreement, for carrying out the purposes and provisions of this section and prescribing anything that, by this section, is to be prescribed.
- (11) **Exemption from** *Statutory Instruments Act.*—An order made pursuant to subsection (1) on or after April 28, 1989 is exempt from the application of sections 3, 5 and 11 of the *Statutory Instruments Act*.
- (12) **Publication.**—Every order made pursuant to subsection (1) shall be published in the *Canada Gazette*. S.C. 1988, c. 65, s. 97; S.C. 1989, c. 18, s. 4; S.C. 1993, c. 44, s. 129.

Bilateral Safeguard Measures for Mexican Agricultural Goods

- **60.3** (1) **Purpose of section.**—The purpose of this section is to give effect to paragraphs 3 and 4 of Article 703 of the North American Free Trade Agreement.
- (2) **Application.**—This section applies to goods of tariff item Nos. 0603.10.90, 0702.00.91, 0703.10.31, 0707.00.91, 0710.80.20, 0811.10.10, 0811.10.90 and 2002.90.00 that are entitled to the benefit of the Mexico Tariff.
- (3) Limits on reduction of duty.—The Governor in Council may, on the recommendation of the Minister of Finance, by order, specify limits on the aggregate quantity of goods of any tariff item referred to in subsection (2) entitled to benefit from any reduction of customs duty provided for in Schedule II, and the limits shall apply during such periods as may be specified in the order.
- (4) **Application of special measures.**—Any order made pursuant to subsection 59.1(1) or (11) of this Act or subsection 5(3), (4.01) or (4.2) of the *Export and Import Permits Act* shall have effect in respect of goods referred to in subsection (2) only during any period in which the limits specified under subsection (3) for those goods have not been exceeded.
- (5) Cessation.—This section ceases to be in force on December 31, 2002. S.C. 1993, c. 44, s. 130.

Bilateral Emergency Measures for Textile and Apparel Goods

- **60.4** (1) **Order by Governor in Council.**—The Governor in Council may, on the recommendation of the Minister of Finance, make an order as described in subsection (2) where it appears to the satisfaction of the Governor in Council as a result of
 - (a) a report of the Minister of Finance as a result of a complaint under subsection 23(1.03) of the *Canadian International Trade Tribunal Act*, or
 - (b) an inquiry made by the Canadian International Trade Tribunal under subparagraph 26(1)(a)(i.3) of that Act,

that textile and apparel goods set out in Appendix 1.1 of Annex 300-B of Chapter Three of the North American Free Trade Agreement and entitled to the benefit of the United States Tariff or the Mexico Tariff of Schedule I are being imported into Canada in such increased quantities, in absolute terms or relative to the domestic market for the goods, and under such conditions as to cause serious damage or an actual threat thereof to domestic producers of like or directly competitive goods.

- (2) Terms of order.—The order may
- (a) suspend any further reduction of any rate of customs duty with respect to the goods that would otherwise result under section 25.2; or
- (b) impose, in addition to any other duty imposed under this or any other Act, a temporary duty on the goods at a rate specified in the order.
- (3) Limit on amount of temporary duty.—The rate of temporary duty imposed pursuant to paragraph (2)(b) must not, when added to the rate of customs duty specified in Schedule I for the goods, exceed the lesser of
 - (a) the Most-Favoured-Nation Tariff rate for the goods in effect when the order is made, and
 - (b) the Most-Favoured-Nation Tariff rate for the goods in effect on December 31, 1993.
 - (4) **Period and revocation.**—Every order made pursuant to subsection (1)
 - (a) shall, subject to this section, remain in effect for such period, not exceeding three years, as is specified in the order; and
 - (b) may, notwithstanding any other provision of this section, be revoked at any time by the Governor in Council on the recommendation of the Minister of Finance.
- (5) **Duration of order.**—Where an order is made pursuant to subsection (1) on the basis of a report of the Minister of Finance, the order ceases to have effect on the expiration of the one hundred and eightieth day from the day the order is made, unless, before the order so ceases to have effect, the Canadian International Trade Tribunal reports to the Governor in Council pursuant to an inquiry under subparagraph 26(1)(a)(i.3) of the *Canadian International Trade Tribunal Act* that the goods described in the report of the Minister of Finance are being imported into Canada from the country named in the report under such conditions as to cause serious damage or an actual threat thereof to domestic producers of like or directly competitive goods, in which case the order shall remain in effect for such period, not exceeding three years, as is specified in the order.
- (6) Extension of order.—The Governor in Council may, on the recommendation of the Minister of Finance, by order, extend the effective period of an order made as a result of an inquiry of the Canadian International Trade Tribunal referred to in paragraph (1)(b) or an order that remains in effect as a result of a report of that Tribunal, as provided in subsection (5), but the total effective period shall not exceed three years.
- (7) Rate of duty after order ceases to have effect.—Where an order made pursuant to subsection (1) ceases to have effect in a given calendar year,
 - (a) the rate of customs duty applicable to the goods after the order ceases to have effect and until December 31 of that year shall be the rate that would have been applicable on the first anniversary of the making of the order if the rate of customs duty had been reduced in accordance with section 25.2; and
 - (b) the rate of customs duty applicable to the goods beginning on January 1 of the year

following the year in which the order ceases to have effect shall be the rate specified by the Minister of Finance pursuant to subsection (8).

- (8) **Specification of applicable rate.**—The Minister of Finance shall, by order, specify either that
 - (a) the rate referred to in paragraph (7)(b) shall be the rate of customs duty that would have been applicable on January 1 of the year following the year in which the order ceases to have effect if the rate of customs duty had been reduced in accordance with section 25.2 and the rate for subsequent years shall be reduced to free in accordance with that section; or
 - (b) the rate referred to in paragraph (7)(b) shall be the rate of customs duty that would have been applicable on the first anniversary of the making of the order and the rate shall be reduced to free in equal annual stages beginning on January 1 of the year following the year in which the order ceases to have effect and ending on the day on which the rate of customs duty for the goods would otherwise be reduced to free in accordance with section 25.2.
- (9) **Further orders.**—An order made under subsection (1) shall not be made more than once during the period commencing when this section comes into force and ending on December 31, 2003 in respect of goods of a particular kind. S.C. 1993, c. 44, s. 130.

Measures Relating to Television Picture Tubes

60.5 Order increasing duty on certain cathoderay television picture tubes.—For the purpose of giving effect to Annex 308.2 of Chapter Three of the North American Free Trade Agreement, the Minister of Finance may, by order and notwithstanding any other provision of this Act imposing customs duties, provide for a rate of customs duty for goods described in that Annex, but the rate may not exceed the rate provided for in subsection 25.2(2) or paragraph 25.2(3)(e), as the case may be. S.C. 1993, c. 44, s. 130.

Surcharge

- **61.** (1) **Surcharge.**—Where at any time it appears to the satisfaction of the Governor in Council, on a report of the Minister of Finance, that Canada's external financial position and its balance of payments are such as to require special measures respecting Canadian imports, the Governor in Council may, by order, subject any goods that originate in any country or are entitled to the benefit of any tariff treatment provided for by any regulations made pursuant to section 13, or any class of those goods, to a surcharge over and above the customs duties imposed pursuant to this Act.
- (2) **Amount of surcharge.**—The surcharge referred to in subsection (1) may be different in amount for different goods or classes of goods.
- (3) **Period surcharge in effect.**—Subject to subsection (4), unless revoked, an order made pursuant to subsection (1) shall have effect for such period as is specified in the order.
- (4) Order ceases to have effect unless approved by Parliament.—Where the period for which an order is specified to have effect will expire after the one hundred and eightieth day from the day on which the order is made, the order shall cease to have effect on that one hundred and eightieth day if Parliament is then sitting or, if Parliament is not then sitting, on the expiration of the fifteenth sitting day after that day, unless before the order so ceases to have effect it is approved by a resolution adopted by both Houses of Parliament.

(5) Sitting day.—For the purposes of subsection (4), a day on which either House of Parliament sits shall be deemed to be a sitting day. S.C. 1993, c. 44, s. 131.

Reduction or Removal of Duties

- 62. (1) Reciprocal reductions.—The Governor in Council may, on the recommendation of the Minister of Finance, by order,
 - (a) reduce or remove customs duties on goods imported from any country by way of compensation for concessions granted by that country or any other country, subject to any conditions that may be specified in the order;
 - (b) reduce or remove customs duties on goods imported from any country as may be required by Canada's international obligations, subject to such conditions as may be specified in the order; and
 - (c) reduce or remove customs duties on goods imported, whether before or after the order comes into force, from any country by way of compensation for any action taken under subsection 59.1(1) or (11), 60(1) or (6.1), 60.1(1), 60.11(2) or 60.4(1) of this Act or under subsection 5(3), (4.01) or (4.2) of the *Export and Import Permits Act*.
- (2) Order may be retroactive.—Any order made under subsection (1) may, if it so provides, be retroactive and have effect with respect to any period before it is made that begins after April 8, 1992. S.C. 1988, c. 65, s. 98; S.C. 1993, c. 25, s. 4; S.C. 1993, c. 44, ss. 132, 142.

Used Goods and Less than Prime Quality Goods

- **63.** (1) **Definition of "officer".**—In this section, "officer" means a designated officer within the meaning of section 59 of the Customs Act.
- (2) Increased rate of duty on used goods and less than prime quality goods.—Subject to this section, the rate of customs duty applicable under this or any other Act of Parliament, or under any regulation or order made thereunder, to goods that are used goods or less than prime quality goods or of any class or category thereof is the rate of customs duty otherwise applicable on the value for duty of those goods increased by twenty-five per cent.
- (3) Conditions.—Subsection (2) applies only in respect of any used goods or less than prime quality goods or goods of any class or category thereof
 - (a) where the goods
 - (i) have been identified in a written statement submitted to an officer by a manufacturer of similar goods produced in Canada,
 - (ii) were accounted for under section 32 of the *Customs Act* within the ninety days immediately preceding the date of receipt of the statement by the officer, and
 - (iii) have been determined by an officer, within thirty days after the date of receipt of the statement, to be used goods or less than prime quality goods or goods of any class or category thereof not referred to in subsection (4); or
 - (b) where the goods
 - (i) are identical goods in relation to other goods in respect of which a determination referred to in subparagraph (a)(iii) has been made, and
 - (ii) are accounted for under section 32 of the *Customs Act* on or after the accounting of those other goods but neither prior to the ninety days immediately preceding the date of receipt of the statement referred to in subparagraph (a)(i) submitted in respect of

those other goods nor later than two years immediately following the accounting of those other goods.

- (4) **Exemptions.**—Subsection (2) does not apply in respect of any used goods or less than prime quality goods or goods of any prescribed class or category thereof.
- (5) **Regulations recommended by the Minister of Finance.**—The Governor in Council, on the recommendation of the Minister of Finance, may make regulations
 - (a) defining, for the purposes of this section, the expressions "used goods", "less than prime quality goods", "identical goods" and "similar goods";
 - (b) excluding, unconditionally or subject to such conditions as may be prescribed, any used goods or less than prime quality goods or goods of any class or category thereof, in whole or in part, from the application of this section;
 - (c) prescribing anything that is, by this section, to be prescribed by regulations; and
 - (d) generally for carrying out the provisions of this section.
- (6) **Regulations recommended by the Minister.**—The Governor in Council, on the recommendation of the Minister, may make regulations prescribing the information required to be contained in a written statement referred to in subparagraph (3)(a)(i).
- (7) **Appeals under** *Customs Act.*—Where a determination of an officer referred to in subparagraph (3)(a)(iii) is made in respect of any goods, re-determinations may be made and appeals taken
 - (a) in respect of that determination or the application of this section to identical goods accounted for under section 32 of the *Customs Act* prior to that determination, as if that determination or application were a re-determination of the officer made pursuant to section 61 of the *Customs Act*, or
 - (b) in respect of the application of this section to identical goods accounted for under section 32 of the *Customs Act* after that determination, as if that application were a determination of the tariff classification made pursuant to section 58 of the *Customs Act*, or a re-determination of the officer made pursuant to section 61 of the *Customs Act*, as the case may be,

and, for the purposes of such re-determinations and appeals, sections 58 to 72 of the *Customs Act* apply, with such modifications as the circumstances require.

Marking of Goods

- **63.1** (1) **Regulations requiring marking.**—The Governor in Council may, on the recommendation of the Minister of Finance, make regulations
 - (a) specifying imported goods of any description or class, including any description or class specified in terms of the use of the goods, and requiring them to be marked in accordance with the regulations made pursuant to subsection (2) so as to indicate their country or geographic area of origin; and
 - (b) for determining the country or geographic area of origin of imported goods for the purposes of paragraph (a).
- (2) **Regulations prescribing marking requirements.**—The Minister may make regulations for the purpose of the administration of this section, including regulations

- (a) prescribing the manner in which imported goods must be marked and any conditions that apply to the marking of the goods; and
- (b) prescribing when the imported goods must be marked, including whether they must be marked before or after importation, and prescribing any conditions that apply in respect of the time of marking.
- (3) **Applicability of regulations.**—Regulations made under this section may apply generally or in relation to particular countries or geographic areas defined in the regulations.
- (4) Suspension of operation of section 64.—The operation of section 64 is suspended during the period in which this section is in force, S.C. 1993, c. 44, s. 133.
- **64.** (1) Mark of origin.—The Governor in Council may, by order, direct that imported goods of any description or class specified in the order, be marked, stamped, branded or labelled in accordance with the regulations made pursuant to subsection (5) so as to indicate the country of origin.
- (2) Manner in which goods are to be marked, etc.—Where an order is made pursuant to subsection (1), the goods to which the order applies shall be marked, stamped, branded or labelled
 - (a) in legible English or French words;
 - (b) in a conspicuous place; and
 - (c) in a permanent manner.
- (3) Goods not to be released until marked, etc.—Where any goods to which an order made pursuant to subsection (1) applies are imported after the date of the coming into force of the order and do not comply with the requirements of the order, the goods shall not be released until they have been marked, stamped, branded or labelled by the importer in accordance with this section under the supervision of an officer at the expense of the importer.
- (4) Offence and punishment.—Any person who contravenes any of the provisions of this section relating to the marking, stamping, branding or labelling of any imported goods or who defaces, destroys, removes, alters or obliterates any marks, stamps, brands or labels, with intent to conceal the information given by or contained in the marks, stamps, brands or labels
 - (a) is guilty of an offence punishable on summary conviction and liable to a fine of not more than two thousand dollars or to imprisonment for a term not exceeding six months or to both; or
 - (b) is guilty of an indictable offence and liable to a fine of not more than twenty-five thousand dollars and not less than two hundred dollars or to imprisonment for a term not exceeding five years or to both.
 - (5) Regulations.—The Minister may make regulations
 - (a) respecting the marking, branding, stamping or labelling of goods; and
 - (b) generally for carrying out the purposes and provisions of this section.

Regulations

65. Regulations.—The Governor in Council may make regulations generally for carrying out the purposes and provisions of this Part.

PART II

DUTIES RELIEF

Interpretation

66. Definitions.—In this Part,

- "customs duties".—"customs duties" means the customs duties imposed under Part I, other than surtaxes imposed under section 59 or 60, temporary duties imposed under section 60.1 or 60.2 or surcharges imposed under section 61;
- "duties".—"duties" means any duties or taxes levied or imposed on imported goods under Part I, the *Excise Tax Act*, the *Excise Act*, the *Special Import Measures Act* or any other law relating to customs;
- "excise taxes".—"excise taxes" means the taxes imposed under the Excise Tax Act, other than the goods and services tax;
- "goods and services tax".—"goods and services tax" means the tax imposed under Part IX of the Excise Tax Act:
- "process".—"process" includes, in respect of goods, the adjustment, alteration, assembly, manufacture, modification, production or repair of the goods. S.C. 1988, c. 65, s. 99; S.C. 1990, c. 45, s. 22.

Her Majesty

67. Part binds Her Majesty.—This Part is binding on Her Majesty in right of Canada or a province.

Penalty and Interest

- **67.1 Interest and penalty to be compounded.**—Interest computed at a prescribed rate or at a specified rate and any penalty computed at a rate per year under any provision of this Act (other than in respect of any amount in respect of duty levied under the *Special Import Measures Act*) shall be compounded daily and, where interest or such a penalty is computed in respect of an amount under a provision of this Act and is unpaid on the day it would, but for this section, have ceased to be computed under that provision, interest at the specified rate shall be computed and compounded daily on that unpaid interest or penalty from that day to the day it is paid and shall be paid as that provision required the amount to be paid.* S.C. 1992, c. 28, s. 33.
- **67.2** Prescribed rate may be authorized.—Where a person is required under a provision of this Act to pay interest on an amount at the specified rate, the person shall, where the Minister or any officer designated by the Minister for the purposes of this section so authorizes, pay interest on that amount under that provision at the prescribed rate rather than at the specified rate. S.C. 1992, c. 28, s. 33.

^{*}Section 67.1 not applicable as provided by S.C. 1992, c. 28, s. 33(2)(a) to (c).

DIVISION I

Customs Duties Reductions

- **68.** (1) **Reduction or removal of customs duties.**—The Governor in Council, on the recommendation of the Minister of Finance, may, by order, reduce or remove, for such time and subject to such conditions as are specified in the order, the customs duties in respect of
 - (a) goods that are used as materials in Canadian manufactures; or
 - (b) goods of Chapter 28, 29 or 39, of heading No. 15.19 or 15.20 or of tariff item No. 1702.90.20, 3507.90.00 or 9001.20.00 with the exception of
 - (i) the cellular products of heading No. 39.16, 39.17, 39.18 or 39.19 or of subheading No. 3921.11, 3921.12, 3921.13, 3921.14 or 3921.19,
 - (ii) fittings and tubes and pipes and hoses with attached fittings of heading No. 39.17, and
 - (iii) goods of heading No. 39.22, 39.23, 39.24, 39.25 or 39.26.
- (2) **Schedule II.**—The customs duties imposed under Part I shall be reduced or removed as provided for in Schedule II or in any regulation or order made thereunder.
- (3) Interpretation.—The words and expressions used in Schedule II, wherever those words and expressions are used in Schedule I, have the same meanings as in Schedule I.

DIVISION II

Home Consumption Drawbacks

- **69. Grant of drawback.**—The Minister shall, where an application is made in accordance with sections 70 and 104, grant, in respect of
 - (a) goods enumerated or referred to in Schedule IV that are used for consumption in Canada for the purpose specified in that Schedule,
 - (b) goods enumerated or referred to in Schedule V that are
 - (i) accounted for under section 32 of the $Customs\ Act$ before the time set out in that Schedule, and
 - (ii) used in the manufacture of the Canadian manufactures set out in that Schedule, and
 - (c) prescribed goods that are used in the manufacture of prescribed Canadian manufactures,

a drawback of

- (d) the whole of the customs duties paid in respect of the goods, or
- (e) the portion of the customs duties paid in respect of the goods that is set out in Schedule IV or V, in the case of goods enumerated or referred to in either of those Schedules, or that is prescribed, in the case of prescribed goods.
- **70.** Application.—For the purposes of section 69, an application must be made to the Minister in the prescribed form within four years, or, where another time is prescribed, within that other time, after the payment of the customs duties.
- 71. Amendment of Schedule V.—The Governor in Council, on the recommendation of the Minister of Finance, may, by order, amend Schedule V by adding to or deleting from that Schedule a code setting out

- (a) a description of goods in respect of which drawbacks are to be paid;
- (b) the time before which the goods must be accounted for under section 32 of the *Customs Act*;
- (c) the Canadian manufactures in the manufacture of which the goods must be used; and
- (d) whether the customs duties must be drawn back in whole or in part, and if in part, the portion that must be drawn back.
- **72. Regulations.**—The Governor in Council may make regulations prescribing.
- (a) for the purposes of paragraph 69(c),
 - (i) the goods that are used in the manufacture of prescribed Canadian manufactures,
 - (ii) the Canadian manufactures in the manufacture of which prescribed goods must be used,
 - (iii) the portion that must be drawn back of the customs duties paid in respect of prescribed goods that are used in the manufacture of prescribed Canadian manufactures, and
 - (iv) the circumstances in which and conditions under which drawbacks are to be paid of the customs duties paid in respect of prescribed goods that are used in the manufacture of prescribed Canadian manufactures;
- (b) the time after the payment of the customs duties within which and the manner in which applications for drawbacks to be paid pursuant to section 69 must be made and the evidence that may be required in support of such applications;
- (c) the classes of persons who may claim a drawback pursuant to section 69 and the evidence of entitlement that must be given; and
- (d) for the purposes of code 9040 of Schedule IV,
 - (i) the manner in which applications for recognition as an ethno-cultural group must be made and the evidence that may be required in support of such applications, and
 - (ii) the criteria to which the Minister shall have regard in deciding whether to recognize a group as an ethno-cultural group.

DIVISION III

Machinery and Equipment

- **73. Definition of "machinery and equipment".**—In this Division, except for the purposes of section 75.1, "machinery and equipment" means goods that are classified under a tariff item enumerated in Schedule VI and, where applicable, under a code enumerated in that Schedule with respect to that tariff item. S.C. 1988, c. 65, s. 100.
- **74.** (1) **Relief for machinery and equipment on list.**—No customs duties are payable in respect of machinery and equipment that, at the time the machinery and equipment is accounted for under section 32 of the *Customs Act*, is included on the list of machinery and equipment established by the Minister pursuant to subsection 75(1).
- (2) **Idem.**—The amount of the excise taxes payable in respect of the machinery and equipment referred to in subsection (1) shall be determined as if the duty paid value of the machinery and equipment were the value for duty of the machinery and equipment.
- (3) **Idem.**—The amount of the goods and services tax payable in respect of the machinery and equipment referred to in subsection (1) shall be determined as if the value of the goods, for

the purposes of section 215 of the *Excise Tax Act*, were the value for duty of the machinery and equipment. S.C. 1990, c. 45, s. 23.

- 75. (1) Establishment of list.—The Minister may establish a list of machinery and equipment that, in the opinion of the Minister, having regard to the criteria mentioned in subsection (3), is not available from production in Canada.
- (2) **Publication of list.**—The Minister shall cause a list established under subsection (1) and every addition thereto and deletion therefrom to be published in the Canada Gazette within sixty days after the establishment, addition or deletion, and a list, addition or deletion so published shall be judicially noticed.
- (3) Availability from production in Canada.—For the purposes of subsection (1), the Minister shall have regard to the following criteria:
 - (a) whether a manufacturer has, within his normal operational framework, the full range of technical and physical capabilities necessary for production in Canada of machinery and equipment reasonably equivalent to the relevant machinery and equipment; and
 - (b) whether a Canadian manufacturer has so produced machinery and equipment as to demonstrate a production competence reasonably equivalent to that required to produce the relevant machinery and equipment.
- **75.1** (1) **Relief for machinery and equipment on Free Trade list.**—No customs duties are payable in respect of machinery and equipment that, at the time the machinery and equipment is accounted for under section 32 of the *Customs Act*, is
 - (a) included on the list of machinery and equipment established by the Minister pursuant to subsection (3); and
 - (b) entitled to the benefit of the United States Tariff.
- (2) **Idem.**—The amount of the excise taxes payable in respect of the machinery and equipment referred to in subsection (1) shall be determined as if the duty paid value of the machinery and equipment were the value for duty of the machinery and equipment.
- (2.1) **Idem.**—The amount of the goods and services tax payable in respect of the machinery and equipment referred to in subsection (1) shall be determined as if the value of the goods, for the purposes of section 215 of the *Excise Tax Act*, were the value for duty of the machinery and equipment.
- (3) List.—The Minister shall, for the purpose of implementing paragraph 6 of Article 401 of the Canada-United States Free Trade Agreement, establish a list of machinery and equipment in accordance with Annex 401.6 thereof.
- (4) Additions.—The Minister may add machinery and equipment to the list established under subsection (3). S.C. 1988, c. 65, s. 101; S.C. 1990, c. 45, s. 24.
- **76.** (1) **Remission for machinery and equipment not on list.**—Where an application for remission is made in accordance with subsection (4) in respect of machinery and equipment not included on the list established pursuant to subsection 75(1) and the Minister is of the opinion, having regard to the criteria mentioned in subsection 75(3), that the machinery and equipment is not available from production in Canada, the Minister may remit in respect of the machinery and equipment
 - (a) that portion of the customs duties that, but for this subsection, would be payable in respect of the machinery and equipment that is attributable to the excess of its value for duty over five hundred dollars, and
 - (b) that portion of the excise taxes that, but for this subsection, would be payable in

respect of the machinery and equipment in an amount equal to the difference between the amount of the excise taxes payable in respect of the machinery and equipment and the amount of the excise taxes that would be payable in respect of the machinery and equipment if the duty paid value used to calculate the excise taxes so payable were the value for duty used to calculate the customs duties so payable,

and, notwithstanding Part I and the *Excise Tax Act*, the amounts of the customs duties and excise taxes payable in respect of the machinery and equipment shall be reduced in accordance with paragraphs (a) and (b).

- (2) **Scope of remission.**—Subject to subsection (3), remissions under subsection (1) may be conditional or unconditional and may be granted regardless of whether in a particular case any liability to pay the duties has arisen.
- (3) **Remission may be revoked.**—Where the Minister is of the opinion, having regard to the criteria mentioned in subsection 75(3), that machinery and equipment in respect of which remission has been granted under subsection (1) has become available from production in Canada, the Minister may revoke the remission and, notwithstanding the terms and conditions of the remission, it shall cease to apply to machinery and equipment accounted for under section 32 of the *Customs Act* after the effective date of the revocation.
- (4) **Application.**—An application for remission must be accompanied by evidence satisfactory to the Minister that, having regard to the criteria mentioned in subsection 75(3), the machinery and equipment is not available from production in Canada. R.S.C. 1985, c. 9 (4th Supp.), s. 2; S.C. 1989, c. 18, s. 5.
- 77. (1) **Remission by way of refund.**—A refund shall be granted of the portion of the customs duties or excise taxes described in paragraph 76(1)(a) or (b) if
 - (a) a remission of the portion is made under subsection 76(1);
 - (b) the portion of the duties was paid; and
 - (c) an application for refund is made in accordance with subsection (2).
 - (2) **Application.**—For the purposes of paragraph (1)(c), an application for refund must be
 - (a) supported by such evidence as the Minister may require; and
 - (b) made in the prescribed manner and in the prescribed form containing the prescribed information within five years, or, where another time is prescribed, within that other time, after the machinery and equipment in respect of which it is made is accounted for under section 32 of the *Customs Act*.
- (3) **Regulations.**—The Governor in Council may make regulations prescribing, for the purposes of subsection (2), the manner of making an application and the time within which it must be made. S.C. 1989, c. 18, s. 6.
 - **78.** [Repealed R.S.C. 1985, c. 9 (4th Supp.), s. 3]
- **79.** (1) **Issuance of certificate.**—Where a remission is granted under section 76, the Minister shall issue to the person who applied for the remission a certificate bearing a number to be used to identify the machinery and equipment.
- (2) Cancellation of certificate.—Where a remission granted under section 76 ceases to have effect or is revoked pursuant to subsection 76(3), the Minister may cancel the certificate issued under subsection (1) in respect of the remission.
- (3) Release of machinery and equipment.—Machinery and equipment in respect of which remission is granted under section 76 may be released without payment of the portions

of the duties remitted thereby if the number mentioned in the certificate issued under subsection (1) is disclosed when the machinery and equipment is accounted for under section 32 of the *Customs Act* and the certificate is in force at that time.

DIVISION III.1

Automotive Machinery and Equipment

- 79.1 Definitions.—In this Division,
- "automotive machinery and equipment".—"automotive machinery and equipment" means machinery and equipment for the manufacture of
 - (a) parts, accessories and parts thereof for use as original equipment for motor vehicles, or
 - (b) tooling for the production of such parts, accessories and parts thereof;
- "motor vehicles".—"motor vehicles" means vehicles that, if imported, would be classified under heading No. 87.02, 87.03 or 87.04 or subheading No. 8701.20, 8705.10, 8705.20, 8705.30 or 8705.40. S.C. 1989, c. 18, s. 7.
- **79.2** (1) **Remission.**—Where an application for remission is made in accordance with subsection (4) and the Minister is of the opinion, having regard to the criteria mentioned in section 79.3, that the automotive machinery and equipment in respect of which the application is made is not available from production in Canada, the Minister may remit
 - (a) the customs duties that, but for this subsection, would be payable in respect of the automotive machinery and equipment, and
 - (b) that portion of the excise taxes that, but for this subsection, would be payable in respect of the automotive machinery and equipment in an amount equal to the difference between the amount of the excise taxes payable in respect of the automotive machinery and equipment and the amount of excise taxes that would be payable in respect of the automotive machinery and equipment if the duty paid value used to calculate the excise taxes so payable were the value for duty used to calculate the customs duties so payable,

and, notwithstanding Part I and the *Excise Tax Act*, the amounts of the customs duties and excise taxes payable in respect of the automotive machinery and equipment shall be reduced in accordance with paragraphs (a) and (b).

- (2) **Scope of remission.**—Subject to subsection (3), remissions under subsection (1) may be conditional or unconditional and may be granted regardless of whether in a particular case any liability to pay the duties has arisen.
- (3) **Remission may be revoked.**—Where the Minister is of the opinion, having regard to the criteria mentioned in section 79.3, that automotive machinery and equipment in respect of which remission has been granted under subsection (1) has become available from production in Canada, the Minister may revoke the remission and, notwithstanding the terms and conditions of the remission, it shall cease to apply to automotive machinery and equipment accounted for under section 32 of the *Customs Act* after the effective date of the revocation.
- (4) **Application.**—An application for remission must be accompanied by evidence satisfactory to the Minister that, having regard to the criteria mentioned in section 79.3, the automotive machinery and equipment is not available from production in Canada. S.C. 1989, c. 18, s. 7.
- **79.3** Availability from production in Canada.—For the purposes of section 79.2, the Minister shall have regard to the following criteria:

- (a) whether a manufacturer has, within his normal operational framework, the full range of technical and physical capabilities necessary for production in Canada of automotive machinery and equipment reasonably equivalent to the relevant automotive machinery and equipment;
- (b) whether a Canadian manufacturer has so produced automotive machinery and equipment as to demonstrate a production competence reasonably equivalent to that required to produce the relevant automotive machinery and equipment; and
- (c) whether an order for the relevant automotive machinery and equipment, if placed with a Canadian manufacturer at the earliest practicable time, could reasonably be or have been met within the required or actual delivery time. S.C. 1989, c. 18, s. 7.
- **79.4** (1) **Remission by way of refund.**—A remission of customs duties or excise taxes under section 79.2 shall be granted by way of a refund if
 - (a) the duties to be remitted have been paid; and
 - (b) an application for refund is made in accordance with subsection (2).
- (2) **Application.**—For the purposes of paragraph (1)(b), an application for refund must be
 - (a) supported by such evidence as the Minister may require; and
 - (b) made in the prescribed manner and in the prescribed form containing the prescribed information within five years or, where another time is prescribed, within that other time, after the automotive machinery and equipment in respect of which it is made is accounted for under section 32 of the *Customs Act*.
- (3) **Regulations.**—The Governor in Council may make regulations prescribing, for the purposes of subsection (2), the manner of making an application and the time within which it must be made. S.C. 1989, c. 18, s. 7.
- **79.5** (1) **Issuance of certificate.**—Where a remission is granted under section 79.2, the Minister shall issue to the person who applied for the remission a certificate bearing a number to be used to identify the automotive machinery and equipment.
- (2) Cancellation of certificate.—Where a remission granted under section 79.2 ceases to have effect or is revoked pursuant to subsection 79.2(3), the Minister may cancel the certificate issued under subsection (1) in respect of the remission.
- (3) **Release of automotive machinery and equipment.**—Automotive machinery and equipment in respect of which remission is granted under section 79.2 may be released without payment of the duties remitted thereby if the number mentioned in the certificate issued under subsection (1) is disclosed when the automotive machinery and equipment is accounted for under section 32 of the *Customs Act* and the certificate is in force at that time. S.C. 1989, c. 18, s. 7.

DIVISION IV

Release without Payment in Full of Duties

Inward Processing

80. (1) **Relief for goods.**—Where an application is made in accordance with section 81, relief shall be granted from the payment of the customs duties imposed under Part I that, but for this section, would be payable in respect of

- (a) imported goods used in, wrought into or attached to class 1 goods or class 2 goods; and
- (b) imported materials, other than fuel or plant equipment, directly consumed or expended in the processing of class 1 goods or class 2 goods.
- (2) **Definitions.**—In this section and sections 81 to 83,
- "class 1 goods".—"class 1 goods" means goods processed in Canada by an initial processor that are exported without being used in Canada for any purpose;
- "class 2 goods".—"class 2 goods" means goods processed in Canada by an initial processor that are further processed in Canada by one or more secondary processors into other goods that are exported without being used in Canada for any purpose;
- "initial processor".—"initial processor" means
 - (a) in respect of class 1 goods, the processor who processes the goods in Canada, and
 - (b) in respect of class 2 goods, the processor who initially processes the goods in Canada;
- "secondary processor".—"secondary processor" means, in respect of class 2 goods, a processor, other than the initial processor, who processes the goods in Canada. S.C. 1993, c. 25, s. 5.
- 81. (1) Application—class 1 goods.—An application for relief under section 80 in respect of class 1 goods must be
 - (a) made in the prescribed form by the initial processor before the importation of the goods or materials;
 - (b) accompanied by evidence satisfactory to the Minister of an agreement for the sale and exportation from Canada of the class 1 goods or a pattern of past sales and exportations of class 1 goods that would, if continued, result in the sale and exportation of the class 1 goods; and
 - (c) accompanied, in the prescribed circumstances, by security, of the prescribed nature and in the prescribed amount, for the satisfaction by the initial processor of the conditions set out in subsection 83(1).
- (2) **Application—class 2 goods.**—An application for relief under section 80 in respect of class 2 goods must be
 - (a) made in the prescribed form by the initial processor and each secondary processor before the importation of the goods or materials;
 - (b) accompanied by evidence satisfactory to the Minister,
 - (i) provided by the initial processor and each secondary processor, other than the final secondary processor, of an agreement for the delivery of the class 2 goods to a secondary processor for further processing in Canada, directly or indirectly, into other goods that are exported without being used in Canada for any purpose or of a pattern of past deliveries of class 2 goods that would, if continued, result in the delivery of the class 2 goods to a secondary processor for that further processing, and
 - (ii) provided by the final secondary processor, of an agreement for the sale and exportation from Canada of the class 2 goods or a pattern of past sales and exportations of class 2 goods that would, if continued, result in the sale and exportation of the class 2 goods; and
 - (c) accompanied, in the prescribed circumstances, by security, of the prescribed nature and in the prescribed amount, for the satisfaction by the initial processor and each secondary processor of the conditions set out in subsection 83(2), S.C. 1993, c. 25, s. 5.

- **82.** (1) **Certificate.**—Where relief is granted under section 80, the Minister shall issue to the initial processor and each secondary processor who applied for the relief a certificate bearing a number to be used to identify the imported goods or materials.
- (2) **Release of imported goods or materials.**—Where a number mentioned in a certificate issued under subsection (1) is disclosed when the imported goods or materials are accounted for under section 32 of the *Customs Act*, the goods or materials may be released without any payment of customs duties. S.C. 1993, c. 25, s. 6.
- **83.** (1) Conditions—class 1 goods.—Relief under section 80 in respect of class 1 goods is subject to the following conditions:
 - (a) the initial processor submits to the Minister any reports and other information that are required by the Minister for the administration of this Division;
 - (a.1) submit to the Minister such evidence as the Minister may require for the purpose of administering section 83.02;
 - (b) the initial processor exports the class 1 goods within four years or, where another time is prescribed, within that other time, after the imported goods or materials were accounted for under section 32 of the *Customs Act*; and
 - (c) the initial processor does not use the class 1 goods, or permit them to be used, other than for the exportation described in paragraph (b).
- (2) Conditions—class 2 goods.—Relief under section 80 in respect of class 2 goods is subject to the following conditions:
 - (a) the initial processor and each secondary processor submit to the Minister any reports and other information that are required by the Minister for the administration of this Division;
 - (b) the initial processor and each secondary processor, other than the final secondary processor, deliver the class 2 goods to a secondary processor for further processing in Canada directly or indirectly into other goods that are exported without being used in Canada for any purpose;
 - (c) the final secondary processor exports the class 2 goods within four years or, where another time is prescribed, within that other time, after the imported goods or materials were accounted for under section 32 of the *Customs Act*; and
 - (d) the initial processor and each secondary processor do not use the class 2 goods, or permit them to be used, otherwise than as described in paragraph (b) or (c), as the case may be. S.C. 1989, c. 18, s. 8; S.C. 1993, c. 25, s. 7; S.C. 1993, c. 44, ss. 134, 142.
- **83.01 Definition of "customs duties".**—In section 83.02, "customs duties" means customs duties imposed under Part I, other than additional customs duties imposed under section 20, surtaxes imposed under section 59, 59.1 or 60, temporary duties imposed under section 60.1, 60.11, 60.2 or 60.4 or surcharges imposed under section 61. S.C. 1993, c. 44, s. 135.
- **83.02** (1) **Relief repayable.**—Where relief from customs duties is granted under section 80 and the goods are subsequently exported to a NAFTA country on or after a date determined under subsection (2) in relation to that country,
 - (a) the person who exported the goods shall, within thirty days after the exportation of the goods, report their exportation to an officer at a customs office; and
 - (b) notwithstanding any other provision of this Part, persons who exported the goods, made an application for the relief from customs duties or were granted the relief are, from

the time of the exportation of the goods, jointly and severally liable to pay, subject to subsections (3) to (5), the amount of the customs duties for which the relief was granted to Her Majesty in right of Canada, which amount shall be deemed to be an amount owing to Her Majesty in right of Canada pursuant to the *Customs Act*.

- (2) Effective date.—The date referred to in subsection (1) is
- (a) the date on which this section comes into force, in the case of exports to the United States or Mexico of goods referred to in paragraph 8 of Article 303 of the North American Free Trade Agreement;
- (b) January 1, 1996, in the case of other exports to the United States;
- (c) January 1, 2001, in the case of other exports to Mexico; and
- (d) such date as the Governor in Council may, by order, on the recommendation of the Minister of Finance, fix in relation to any other NAFTA country, in the case of exports to that country.
- (3) **Reduction of amount repayable.**—Except for goods referred to in paragraph 8 of Article 303 of the North American Free Trade Agreement, the amount of the customs duties levied under subsection (1) shall be reduced in accordance with subsection (4) if, within sixty days after the exportation of the goods, evidence is submitted to the Minister that customs duties in respect of the exportation of the goods have been paid to the government of a NAFTA country other than Canada and that evidence is satisfactory to the Minister.
- (4) Amount of reduction.—Subject to subsection (3), the amount of customs duties levied under subsection (1) shall be reduced as follows:
 - (a) if the amount of customs duties paid to the government of the NAFTA country is less than the amount of the customs duties levied, the amount levied shall be reduced by that amount; and
 - (b) if the amount of customs duties paid to the government of the NAFTA country is the same as or more than the amount of the customs duties levied, the amount levied shall be reduced to zero.
 - (5) Exceptions.—Subsection (1) does not apply in respect of
 - (a) imported goods that are entitled to the benefit of the United States Tariff, the Mexico Tariff or the Mexico-United States Tariff;
 - (b) imported orange or grapefruit concentrates used in the manufacture or production of exported orange or grapefruit products of heading No. 20.09 that are exported to the United States;
 - (c) imported goods used as materials to make apparel that is exported to the United States and is subject to the Most-Favoured-Nation Tariff in accordance with the laws of that country;
 - (d) imported goods used as materials in the production of quilted cotton piece goods and quilted man-made piece goods provided for under subheading No. 5811.00 and furniture moving pads provided for under subheading No. 6307.90, that are exported to the United States and are subject to the Most-Favoured-Nation Tariff in accordance with the laws of that country; and
 - (e) such other goods or materials, or classes thereof, as may, on the recommendation of the Minister of Finance, be prescribed by the Governor in Council pursuant to an agreement between the Government of Canada and the government of a NAFTA country relating, either generally or specifically, to the application of this subsection.

- (6) Interest.—A person who is liable to pay an amount of customs duties levied under subsection (1) shall pay to Her Majesty in right of Canada, in addition to that amount, interest at the specified rate for the period beginning on the sixty-first day after the day the customs duties became payable and ending on the day the amount of the customs duties has been paid in full, calculated on the outstanding balance of the amount.
- (7) **Penalty.**—Every person who fails to comply with paragraph (1)(a) is liable to pay a penalty of 6% per year of an amount equal to the customs duties that would, but for subsections (3) and (4), be payable on the goods for the period beginning on the first day after the report was required to be made pursuant to paragraph (1)(a) and ending on the day the report is made.
- (8) **Offence.**—Every person who contravenes paragraph (1)(a) is guilty of an offence punishable on summary conviction and liable to a fine of not more than two thousand dollars or to imprisonment for a term not exceeding six months or to both.
- (9) **Regulations.**—The Governor in Council may, on the recommendation of the Minister of Finance, make regulations prescribing anything that by this section is to be or may be prescribed.
- (10) **Suspension of operation of sections 83.1 and 83.2.**—The operation of sections 83.1 and 83.2 is suspended during the period in which this section is in force. S.C. 1993, c. 44, s. 135.
- **83.1 Definition of "customs duties".**—In section 83.2, "customs duties" means customs duties imposed under Part I, other than additional customs duties imposed under section 20, surtaxes imposed under section 59 or 60, temporary duties imposed under section 60.1 or 60.2 or surcharges imposed under section 61. S.C. 1988, c. 65, s. 102.
- **83.2** (1) **Relief repayable.**—Where relief from customs duties is granted under section 80 and the goods subsequently exported are exported to the United States on or after January 1, 1994 or such later date as may, before January 1, 1994, be fixed by order of the Governor in Council pursuant to an agreement between the Government of Canada and the Government of the United States relating, either generally or specifically, to the application of this subsection,
 - (a) the person who exported the goods shall, within thirty days after the exportation of the goods to the United States, report their exportation to an officer at a customs office; and
 - (b) notwithstanding any other provision of this Part, the person who exported the goods and the person to whom the relief was granted are, from the time of the exportation of the goods to the United States, jointly and severally liable to pay the amount of the relief to Her Majesty in right of Canada, which amount shall be deemed to be an amount owing to Her Majesty in right of Canada pursuant to the *Customs Act*.
 - (2) Exceptions.—Subsection (1) does not apply in respect of
 - (a) imported goods subsequently exported in the condition in which they were imported;
 - (b) imported goods entitled to the benefit of the United States Tariff;
 - (c) imported orange or grapefruit concentrates used in the manufacture or production of exported orange or grapefruit products of heading No. 20.09;
 - (d) imported fabric that is made into apparel that, when imported into the United States, is subject to the Most-Favoured-Nation Tariff in accordance with the laws of that country; or
 - (e) such other goods or materials, or classes thereof, as may, by regulation, on the recommendation of the Minister of Finance, be prescribed by the Governor in Council pursuant to an agreement between the Government of Canada and the Government of the

United States relating, either generally or specifically, to the application of this subsection.

- (3) Interest.—A person who is liable to pay the amount of the relief under subsection (1) is liable to pay to Her Majesty in right of Canada, in addition thereto, interest thereon at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month commencing on the expiration of ninety days after the relief became payable during which any amount remains outstanding, calculated on the amount outstanding.
- (4) Amounts under ten dollars.—Where interest owing under subsection (3) is less than ten dollars, no interest shall be paid.
- (5) **Offence.**—Every person who contravenes paragraph (1)(a) is guilty of an offence punishable on summary conviction and liable to a fine of not more than two thousand dollars or to imprisonment for a term not exceeding six months or to both.
- (6) **Regulations.**—The Governor in Council may, on the recommendation of the Minister of Finance, make regulations prescribing anything that by this section is to be or may be prescribed. S.C. 1988, c. 65, s. 102; S.C. 1992, c. 28, s. 34.

Goods Imported and Subsequently Exported

- **84.** Relief for imported goods subsequently exported.—Where an application is made in accordance with section 85, relief shall be granted from the payment of the whole or such portion as is prescribed of the duties (other than the goods and services tax) that, but for this section, would be payable in respect of prescribed goods that are imported and subsequently exported after being used in Canada only for a prescribed purpose. S.C. 1990, c. 45, s. 25.
 - 85. Application.—For the purposes of section 84, an application must be
 - (a) made in the prescribed form;
 - (b) made, in the prescribed circumstances, by a member of a prescribed class of persons; and
 - (c) accompanied, in the prescribed circumstances, by
 - (i) the prescribed documents, and
 - (ii) security of the prescribed nature for the performance by the member of the prescribed class of persons of the conditions enumerated in section 87 in the prescribed amount.
- **86.** Release of imported goods.—Where relief is granted under section 84, the goods may be released without the payment of the whole or such portion of the duties (other than the goods and services tax) as is prescribed. S.C. 1990, c. 45, s. 26.
- **87.** (1) Conditions.—Relief from the payment of duties in respect of imported goods granted under section 84 is subject to the prescribed conditions and to the conditions that the importer of the goods must export them from Canada within one year, or where another time is prescribed, within that other time, after the release of the goods and provide satisfactory evidence of the exportation to the Minister.
- (2) **Extension of time.**—The Minister may, in respect of prescribed goods, extend the period referred to in subsection (1) by not more than six months where it is impracticable or impossible for the importer to export the goods within the period.

Canadian Goods Abroad

- **88.** (1) **Relief for Canadian goods abroad.**—Subject to section 91, where an application is made in accordance with section 89, relief shall be granted from the payment of the portion of the duties, determined in accordance with section 92, that, but for this section, would be payable in respect of goods returned to Canada within one year, or, where another time is prescribed, within that other time, after their exportation in the prescribed manner from Canada where
 - (a) the returned goods were repaired outside Canada after being exported for the declared purpose of repairs;
 - (b) equipment was added outside Canada to the goods; or
 - (c) work was done outside Canada on the returned goods and the goods exported from Canada were the product of Canada.
- (2) **Emergency repairs.**—Subject to section 91, where an application is made in accordance with section 89, relief shall be granted from the payment of the whole of the duties that, but for this section, would be payable in respect of aircraft, vehicles or vessels returned to Canada after their exportation from Canada, where
 - (a) the returned aircraft, vehicles or vessels were repaired outside Canada as a result of an unforeseen contingency that occurred outside Canada; and
 - (b) the repairs were necessary to ensure the safe return to Canada of the aircraft, vehicles or vessels.
 - 89. Application.—For the purposes of section 88, an application must be
 - (a) accompanied by evidence satisfactory to the Minister that
 - (i) the repairs could not have been made in Canada at the place where the goods were located before their exportation, or within a reasonable distance thereof, where paragraph 88(1)(a) applies,
 - (ii) the equipment added was unavailable in Canada or was of a class or kind not made in Canada and could not practicably have been added in Canada, where paragraph 88(1)(b) applies, or
 - (iii) it would not have been practicable to do the work in Canada, but that facilities to do that work will be established in Canada within a time specified by the Minister, where paragraph 88(1)(c) applies; or
 - (b) made in the prescribed form on the return to Canada of the goods in respect of which it is made, in the case of an application for relief under subsection 88(2).
- **90. Release of returned goods.**—Subject to section 92, where relief is granted under section 88, the goods may be released without any payment of duties.
- **91. Avoidance.**—Relief shall not be granted under section 88 in respect of goods that were returned to Canada after being exported from Canada if
 - (a) relief, conditional on the exportation of the goods, was granted in respect of any duties paid or payable; or
 - (b) in the case of an application under subsection 88(1), there has not been paid the portion of the duties, determined in accordance with section 92, in respect of which no relief may be granted under subsection 88(1).
- **92.** Value for duty of work abroad.—For the purposes of subsection 88(1), the portion of the duties in respect of which relief is granted under subsection 88(1) shall be determined by

subtracting from the amount of the duties that, but for subsection 88(1), would be payable in respect of the returned goods the amount obtained by applying the same rate as would, but for subsection 88(1), be applied to determine the duties to the value of

- (a) the repairs outside Canada, where paragraph 88(1)(a) applies;
- (b) the equipment added and related work done outside Canada, where paragraph 88(1)(b) applies; or
- (c) the work done outside Canada, where paragraph 88(1)(c) applies.

General

- **93.** (1) **Effect of relief.**—Subject to section 83.2, where relief is granted under this Division from the payment of the whole or a portion of duties,
 - (a) no duties are payable, if the relief was from the payment of the whole; and
 - (b) the portion is not payable, if the relief was only from the payment of the portion.
- (2) Exception.—Notwithstanding subsection (1), the amount of the customs duties payable on goods shall, for the purposes of determining the duty paid value of the goods, be determined as if relief had not been granted under this Division.
- (3) **Idem.**—Notwithstanding subsection (1), the amount of customs duties payable on goods shall, for the purposes of determining the value of the goods under section 215 of the *Excise Tax Act*, be determined as if relief had been granted under section 88 but had not been granted under any other provision of this Division. S.C. 1988, c. 65, s. 103; S.C. 1990, c. 45, s. 27.
- **94.** (1) **Refund or cancellation of security.**—The Minister shall refund or cancel security accompanying an application for relief under this Division where the goods or materials in respect of which the application was made are
 - (a) accounted for under section 32 of the *Customs Act* and all duties payable in respect of the goods or materials are paid,
 - (b) destroyed in such manner as the Minister directs, or
 - (c) subject to subsection (2), exported within the period of time referred to in paragraph 83(b) or section 87.
- (2) **Qualification.**—In the case of goods to which subsection 83.2(1) applies, the Minister shall refund or cancel security accompanying an application for relief under section 80 where the goods or materials in respect of which the application was made are exported to the United States and payment of the amount of relief granted under section 80 is made to Her Majesty in right of Canada under paragraph 83.2(1)(b). S.C. 1988, c. 65, s. 104.

Regulations

- 95. (1) Regulations.—The Governor in Council may make regulations prescribing
- (a) for the purposes of paragraphs 81(1)(c) and (2)(c) and 85(c),
 - (i) the circumstances in which security must accompany an application,
 - (ii) the nature of security for the performance of the conditions under which goods or materials are released without the payment in full of duties, and
 - (iii) the amount of the security that in the prescribed circumstances must accompany an application;

- (b) for the purposes of paragraph 83(1)(b), the time after the accounting referred to in that paragraph within which the goods referred to in that paragraph must be exported;
- (b.1) for the purposes of paragraph 83(2)(c), the time after the accounting referred to in that paragraph within which the goods referred to in that paragraph must be exported;
- (c) for the purposes of subsection 87(1), the time after the release of the imported goods within which the goods must be exported;
- (d) for the purposes of section 84,
 - (i) goods that are imported and subsequently exported in respect of which relief from the payment of duties must be granted, and
 - (ii) the purposes for which goods imported and subsequently exported must only have been used in Canada in order for relief to be granted under that section;
- (e) for the purposes of sections 84 and 86, the portion of the duties in respect of which relief must be granted;
- (f) for the purposes of paragraph 85(b), the circumstances in which an application for relief must be made by a member of a prescribed class of persons and the classes of persons who are entitled to apply for relief;
- (g) for the purposes of paragraph 85(c), the circumstances in which prescribed documents must accompany an application;
- (h) the documents that must accompany an application under section 85;
- (i) for the purposes of subsection 87(1), the conditions under which relief is to be granted under section 84;
- (j) for the purposes of subsection 87(2), goods in respect of which the Minister may extend the period referred to in subsection 87(1); and
- (k) for the purposes of section 88,
 - (i) the time after the exportation of goods within which the goods must be returned to Canada, and
 - (ii) the manner in which goods must be exported from Canada.
- (2) **Idem.**—The Governor in Council may, on the recommendation of the Minister of Finance, make regulations for the purpose of the uniform interpretation, application and administration of Chapters Three and Four of the North American Free Trade Agreement and any other matters, as may be agreed on from time to time by the parties to that Agreement. S.C. 1993, c. 25, s. 8; S.C. 1993, c. 44, s. 136.

DIVISION V

Obsolete or Surplus Goods

- **96. Definition of "obsolete or surplus goods".**—In this Division, "obsolete or surplus goods" means goods that are
 - (a) found to be obsolete or surplus to requirements by
 - (i) their importer or owner, in the case of imported goods, or
 - (ii) their manufacturer, producer or owner, in any other case;
 - (b) not used in Canada for any purpose;
 - (c) destroyed in such manner as the Minister directs; and

- (d) not damaged before their destruction.
- **97. Relief for obsolete or surplus goods.**—Where an application is made in accordance with sections 98, 100 and 104, a refund shall be granted of
 - (a) the whole of the duties, other than the goods and services tax, paid in respect of imported obsolete or surplus goods;
 - (b) the whole of the duties, other than taxes imposed under the *Excise Tax Act*, paid in respect of imported goods used in, wrought into or attached to obsolete or surplus goods manufactured or produced in Canada; and
 - (c) the whole of the duties, other than taxes imposed under the *Excise Tax Act*, paid in respect of imported materials, other than fuel or plant equipment, directly consumed in the manufacture or production in Canada of obsolete or surplus goods. S.C. 1990, c. 45, s. 28.
 - 98. Application.—For the purposes of section 97, an application must be
 - (a) made in the prescribed form by
 - (i) the importer or owner of the obsolete or surplus goods, where those goods were imported, or
 - (ii) the manufacturer, producer or owner of the obsolete or surplus goods, in any other case; and
 - (b) accompanied by the prescribed documents.
- **99.** Regulations.—The Governor in Council may make regulations prescribing the documents that must accompany an application under section 98.

DIVISION VI

Additional Relief

- 100. (1) Relief by way of refund.—A refund shall be granted of the whole or a portion of duties, other than the goods and services tax, if
 - (a) relief from the payment of the whole or the portion of duties, other than the goods and services tax, is required to be granted by Division III, III.1, IV or V or the duties, other than the goods and services tax, were not payable under section 74 or 75.1;
 - (b) the whole or the portion of the duties, other than the goods and services tax, was paid; and
 - (c) an application is made in accordance with subsection (2) and section 104.
 - (2) **Application.**—For the purposes of subsection (1), an application must
 - (a) be supported by such evidence as the Minister may require;
 - (b) be made in the prescribed manner and in the prescribed form containing the prescribed information within five years, or, where another time is prescribed, within that other time, after the goods or materials in respect of which it is made are accounted for under section 32 of the *Customs Act* or released under section 86 of this Act; and
 - (c) be made before the exportation of the goods and disclose the number mentioned in the certificate issued under subsection 82(1), where relief was required to be granted by section 80.
 - (3) Regulations.—The Governor in Council may make regulations prescribing, for the

purposes of subsection (2), the manner of making an application and the time within which it must be made. S.C. 1988, c. 65, s. 105; S.C. 1989, c. 18, s. 9; S.C. 1990, c. 45, s. 29.

- 101. (1) Discretionary relief.—The Governor in Council may, on the recommendation of the Minister of Finance or the Minister, by order, remit duties.
- (2) **Scope of relief.**—Remissions under subsection (1) may be conditional or unconditional, in respect of the whole or any portion of the duties, and may be granted regardless of whether in a particular case any liability to pay the duties has arisen.
- (3) **Remission by way of refund.**—Remissions under subsection (1) shall, where the duties have been paid, be made by granting a refund of the whole or such portion of the duties as is remitted.

DIVISION VII

General

Provisions Relating Generally to Relief

- **102. Debts due the Crown.**—Relief may be refused under subsection 77(1) or 79.4(1) or section 80, 84 or 88 if, at the time the relief is authorized or required to be granted, the person to whom the relief is to be granted is indebted to
 - (a) Her Majesty in right of Canada; or
 - (b) Her Majesty in right of a province on account of tax payable to any province, if there is an agreement between Canada and the province authorizing Canada to collect the tax on behalf of the province. S.C. 1989, c. 18, s. 10.
- **103.** (1) **Failure to comply with conditions.**—Where goods or materials are released without the payment in full of duties under subsection 79(3), 79.5(3) or 82(2) or section 86 or 90 and a condition to which the relief is subject is not complied with, the person who fails to comply with the condition
 - (a) shall, within ninety days after the time of the failure to comply, report the failure to an officer at a customs office; and
 - (b) is, from the time of the failure to comply, liable to pay to Her Majesty in right of Canada an amount equal to the whole, or to the portion in respect of which the relief was granted, of the duties that would, but for the relief, be payable in respect of the goods or materials, which amount shall, for the purposes of the *Customs Act*, be deemed to be an amount owing to Her Majesty in right of Canada pursuant to that Act.
- (2) **Offence and punishment.**—Every person who contravenes paragraph (1)(a) is guilty of an offence punishable on summary conviction and liable to a fine of not more than two thousand dollars or to imprisonment for a term not exceeding six months or to both.
 - (3) Exception.—The Governor in Council may make regulations prescribing
 - (a) time limits for the application of subsection (1) and the goods or classes of goods in respect of which, or the circumstances in which, such limits shall apply; and
 - (b) the circumstances in which certain goods would be exempted from the operation of subsection (1), and the goods or classes of goods in respect of which, and the length of time for which and the conditions under which such exemptions shall apply. S.C. 1989, c. 18, s. 11; S.C. 1992, c. 28, s. 35.
 - 104. Waivers.—For the purposes of Divisions II and V and section 100, an application

must be accompanied by waivers, in prescribed form, from all other persons entitled to claim a drawback, refund or remission of the duties, other than the goods and services tax, waiving their right to do so. S.C. 1990, c. 45, s. 30.

- 105. (1) By-products.—Where relief is granted in respect of goods or materials under section 69, 80 or 97 and the goods or materials enter into a process of manufacture or production that results in a by-product in respect of which the relief could not have been granted,
 - (a) the manufacturer or producer is liable to pay to Her Majesty in right of Canada an amount that bears the same proportion to the amount of the relief that the value of the byproduct bears to the total value of the products that result from the processing of the goods or materials, where section 80 applies and the customs duties have not been paid, which amount shall, for the purposes of the *Customs Act*, be deemed to be an amount owing to Her Majesty in right of Canada pursuant to that Act; and
 - (b) the amount of the drawback or refund shall be reduced by the same proportion that the value of the by-product bears to the total value of the products that result from the processing of the goods or materials, in the case of a drawback or refund.
- (2) Merchantable scrap or waste.—Where relief is granted in respect of goods or materials under section 69, 80 or 97 and the goods or materials enter into a process of manufacture or production that results in merchantable scrap or waste in respect of which the relief could not have been granted,
 - (a) where section 80 applies and the customs duties have not been paid, the manufacturer or processor is liable to pay to Her Majesty in right of Canada the amount obtained, which amount shall, for the purposes of the *Customs Act*, be deemed to be an amount owing to Her Majesty in right of Canada pursuant to that Act, and
 - (b) in the case of a drawback or refund, the amount of the drawback or refund shall be reduced by the amount obtained

by applying to the value of the merchantable scrap or waste the lesser of

- (c) the rate of customs duties that applies, at the time the merchantable scrap or waste results from the process, to merchantable scrap or waste of the same kind, and
- (d) the rate of customs duties paid or that, but for the relief, would have been payable in respect of the goods or materials.
- (3) **Definition of "value".**—In this section, "value" means, in respect of a by-product, goods or merchantable scrap or waste,
 - (a) where the manufacturer or producer has sold the by-product, goods or merchantable scrap or waste in an arm's length transaction, the price at which the manufacturer or producer sold the by-product, goods or merchantable scrap or waste; or
 - (b) in any other case, the price at which the manufacturer or producer would ordinarily have sold the by-product, goods or merchantable scrap or waste in an arm's length transaction, at the time
 - (i) the application for a drawback or refund is made, in the case of a drawback or refund, or
 - (ii) the goods are exported, where section 80 applies and the customs duties have not been paid. S.C. 1989, c. 18, s. 12; S.C. 1990, c. 45, s. 31.
- **106.** (1) **Interest.**—Any person who is liable to pay an amount under paragraph 103(1)(b) or section 105 is liable to pay, in addition, commencing on the expiration of ninety days after

the time the amount became payable, interest at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month during which any amount remains outstanding, calculated on the amount outstanding.

- (2) **Amounts under ten dollars.**—Where interest owing under subsection (1) is less than ten dollars, no interest shall be paid. S.C. 1992, c. 28, s. 36.
- 107. (1) Interest.—Any person who is granted a drawback or refund of duties, other than the goods and services tax, under this Part, other than Division III or III.1 or section 101, shall be granted, in addition to the drawback or refund, interest thereon at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month between the time that is ninety days after an application for the drawback or refund is made in accordance with this Part and the time the drawback or refund is granted.
- (2) **Amounts under ten dollars.**—Where interest owing under this section is less than ten dollars, no interest shall be paid. S.C. 1989, c. 18, s. 13; S.C. 1990, c. 45, s. 32; S.C. 1992, c. 28, s. 37.
- **108.** (1) **Regulations prescribing rate of interest.**—The Governor in Council may, on the recommendation of the Minister of Finance, make regulations prescribing a rate of interest or rules for determining a rate of interest for the purposes of any provision of this Act.
- (2) **Retroactive effect.**—A regulation made under subsection (1) that provides that it is to come into force on a day earlier than the day it is registered under section 6 of the *Statutory Instruments Act* shall come into force on that earlier day if it gives effect to a public announcement made on or before that earlier day. S.C. 1992, c. 28, s. 38.
- **109.** Payment out of C.R.F.—Where a drawback or refund is granted under this Part, the drawback or refund shall be paid out of the Consolidated Revenue Fund.

Administration and Enforcement

110. Adoption of *Customs Act*.—The provisions of the *Customs Act* apply, with such modifications as the circumstances require, in respect of the administration and enforcement of this Part, and for the purposes of those provisions, other than sections 160 and 161, a contravention of this Part or a failure to comply with a condition to which relief under this Part is subject shall be deemed to be a contravention of the *Customs Act*.

111. (1) False statements.—No person shall

- (a) make, or participate in, assent to or acquiesce in the making of, false or deceptive statements in a statement or answer made orally or in writing pursuant to this Part or the regulations; or
- (b) to avoid compliance with this Part or the regulations,
 - (i) destroy, alter, mutilate, secrete or dispose of records or books of account,
 - (ii) make, or participate in, assent to or acquiesce in the making of, false or deceptive entries in records or books of account, or
 - (iii) omit, or participate in, assent to or acquiesce in the omission of, a material particular from records or books of account.
- (2) Offence and punishment.—Every person who contravenes subsection (1)
- (a) is guilty of an offence punishable on summary conviction and liable to a fine of not more than two thousand dollars or to imprisonment for a term not exceeding six months or to both; or

- (b) is guilty of an indictable offence and liable to a fine of not more than twenty-five thousand dollars and not less than two hundred dollars or to imprisonment for a term not exceeding five years or to both.
- 112. Officers, etc., of corporations.—Where a corporation commits an offence under this Part, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.
- 113. Limitation period in summary conviction.—Proceedings may be instituted by way of summary conviction in respect of an offence under this Part within but not later than three years after the time when the subject-matter of the proceedings arose.

PART III

PROHIBITED GOODS

114. Importation prohibited.—The importation into Canada of any goods enumerated or referred to in Schedule VII is prohibited.

PART IV

CONSEQUENTIAL AMENDMENTS, TRANSITIONAL, COMING INTO FORCE AND RELATED MATTERS

- 115. (1).—Every order made by the Governor in Council pursuant to section 7 of the *Customs Tariff*, chapter C-41 of the Revised Statutes of Canada, 1970, as that section read immediately before the coming into force of the *Special Import Measures Act*, that was in force on the day immediately preceding the coming into force of the *Special Import Measures Act* shall be deemed to have and to have had the same force and effect for the purposes of that Act and shall continue, and be deemed to have continued, in effect as if it were an order or finding described in sections 3 or 4 of that Act and were made pursuant to section 43 of that Act and that Act shall apply, and shall be deemed to have applied, in respect of the order as if it had been made on the day on which that Act came into force.
- (2).—For greater certainty, for the purposes of making any review, pursuant to section 76 of the *Special Import Measures Act*, of an order referred to in subsection (1), a review may be made of any report made pursuant to section 16.1 of the *Anti-Dumping Act*, chapter A-15 of the Revised Statutes of Canada, 1970, on which the order is based, as if the report were part of the order.

Consequential Amendments

116 to 128. [Consequential amendments are not included here.]

Transitional

129. (1) Amendment to Schedules.—The Governor in Council may, on the recommendation of the Minister of Finance, where the Governor in Council deems it necessary to do so as a consequence of the implementation in Canada of the International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on June 14, 1983, by order, amend any of Schedules I and II and IV to VII.

- (2) Ceases to have effect.—Subsection (1) ceases to have effect on June 30, 1990. S.C. 1989, c. 18, s. 14.
- **130. Definition of "former Act".**—In sections 131 to 133, "former Act" means the *Customs Tariff*, chapter C-54 of the Revised Statutes of Canada, 1985.
- 131. (1) Amendments to other Acts.—The Governor in Council may, on the recommendation of the Minister of Finance, by order, amend any Act of Parliament, other than this Act, by
 - (a) substituting for any reference made therein to a tariff item, or portion thereof, of the former Act a reference to a tariff item or items, or code or codes, or portion or portions thereof, of this Act;
 - (b) substituting for any reference made therein to a schedule to the former Act a reference to a schedule or schedules to this Act; and
 - (c) making such other modifications as the Governor in Council may deem necessary as a consequence of any substitution made pursuant to paragraph (a) or (b) or as a consequence of the enactment of this Act.
- (2) Ceases to have effect.—Subsection (1) ceases to have effect eighteen months after the day on which this Act comes into force.
- 132. Former tariff items.—Where a tariff item of the former Act, or any portion thereof, is referred to in any Act of Parliament or regulation or order made thereunder, the reference to that tariff item or portion shall, unless the context otherwise requires, be construed as a reference to the tariff item or items, or code or codes, or portion or portions thereof, of this Act, the enumeration of goods of which or reference thereto corresponds most closely to the enumeration of goods or reference thereto of the tariff item of the former Act, or portion thereof.
- 133. (1) Certain orders continue in force.—Every order made after November 5, 1980 pursuant to tariff item 41100-1, 42700-1, 42700-2, 42700-3, 42700-4, 42700-5, 42700-9, 42700-10, 42700-11, 42700-12, 42700-13, 42700-14, 42700-15, 42700-16, 42701-1, 42701-2 or 42701-3 of Schedule II to the former Act that is in force on the day immediately preceding the coming into force of this Act shall continue in effect after that day only to the extent that
 - (a) the order remits customs duties or excise taxes on machinery or equipment for which remission of customs duties or excise taxes may be granted by the Minister under section 76 of this Act, and
 - (b) the terms and conditions of the order are not inconsistent with Division III of Part II of this Act,

and the order shall, to that extent, be deemed to have been made by the Minister pursuant to section 76 of this Act and Division III of Part II of this Act shall apply in respect of the order in all respects.

- (2) **Idem.**—Every remission granted pursuant to section 13 of the *Duties Relief Act* that is in effect on the day immediately preceding the day on which this Act comes into force shall continue in effect after that day only to the extent that
 - (a) the remission remits customs duties or excise taxes on machinery or equipment for which remission of customs duties or excise taxes may be granted by the Minister pursuant to section 76 of this Act, and
 - (b) the terms and conditions of the remission are not inconsistent with Division III of Part II of this Act, and the remission shall, to that extent, be deemed to have been granted

by the Minister pursuant to section 76 of this Act and Division III of Part II of this Act shall apply in respect of the remission in all respects.

Repeals

134 and 135. [Repeals are not included here.]

Retroactivity

- 136. (1) Retroactivity of orders and regulations under *Customs Tariff*.—Any order or regulation made pursuant to this Act may, if it so provides, be retroactive and have effect with respect to any period before it is made but no such order or regulation may have effect from a day earlier than the day on which this Act comes into force.
- (2) Ceases to have effect.—Subsection (1) ceases to have effect on June 30, 1990. S.C. 1989, s. 18, s. 15.
- 137. (1) Retroactivity of orders and regulations under Customs Act.—Where the Governor in Council deems it necessary, for the purpose of implementing this Act, that any order or regulation under the Customs Act have retroactive effect, the order or regulation may, if it so provides, be retroactive and have effect with respect to any period before it is made but no such order or regulation may have effect from a day earlier than the day on which this Act comes into force.
- (2) **Non-application.**—Subsection 164(3) of the *Customs Act* does not apply in respect of any regulation that, pursuant to subsection (1), is expressed to have retroactive effect.
- (3) Ceases to have effect.—Subsections (1) and (2) cease to have effect eighteen months after the day on which this Act comes into force.

Schedules

- 138. (1) Schedules to 1987, c. 49.—Subject to subsection (2), Schedules I to VII of the *Customs Tariff*, chapter 49 of the Statutes of Canada, 1987, are deemed to constitute Schedules I to VII, respectively, to this Act.
- (2) **Schedules amended.**—The provisions of Schedules II and VII set out in the first column of Schedule VIII are amended in the manner and to the extent indicated in that Schedule.

[Note: The schedules to the Act are not reproduced here.]

Coming into Force

139. Coming into force.—This Act shall come into force or be deemed to have come into force on January 1, 1988 and shall apply, or be deemed to have applied, to all goods mentioned therein imported on or after that day and to goods previously imported that had not been accounted for under section 32 of the *Customs Act* before that day.

Note:

9. Coming into force [R.S.C. 1985, c. 9 (4th Supp.), s. 9].—This Act shall be deemed to have come into force on February 11, 1988 and applies in respect of goods imported on or after that day and goods previously imported that had not been accounted for under section 32 of the *Customs Act* before that day.

26. Coming into force [S.C. 1989, c. 18, s. 26].—This Act shall be deemed to have come into force on April 28, 1989 and applies to all goods imported on or after that day and to goods previously imported that had not been accounted for under section 32 of the *Customs Act* before that day.



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EXCISE ACT

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EXCISE TAX ACT

R.S.C. 1985, c. E–15, as am. R.S.C. 1985, c. 15 (1st Supp.), ss. 1–46; R.S.C. 1985, c. 1 (2nd Supp.), ss. 187–96; R.S.C. 1985, c. 7 (2nd Supp.), ss. 1–60, 75(1); R.S.C. 1985, c. 42 (2nd Supp.), ss. 1–14; R.S.C. 1985, c. 18 (3rd Supp.), s. 35; R.S.C. 1985, c. 28 (3rd Supp.), ss. 287–89; R.S.C. 1985, c. 41 (3rd Supp.), ss. 123–26; R.S.C. 1985, c. 42 (3rd Supp.); R.S.C. 1985, c. 12 (4th Supp.), ss. 1–55; R.S.C. 1985, c. 47 (4th Supp.), s. 52; S.C. 1988, c. 65, ss. 113–15; S.C. 1989, c. 22, ss. 1–8; S.C. 1990, c. 45, ss. 1–11, 13–17; S.C. 1991, c. 42, ss. 1–5; S.C. 1992, c. 1, ss. 64–65; S.C. 1992, c. 27, s. 90(1)(p); S.C. 1992, c. 28, ss. 41–42; S.C. 1992, c. 29, s. 1; S.C. 1993, c. 25, ss. 54–67; S.C. 1993, c. 27; S.C. 1993, c. 28, s. 78; S.C. 1993, c. 38, s. 86; S.C. 1994, c. 9; S.C. 1994, c. 13, ss. 7, 9; S.C. 1994, c. 21, ss. 126–28; S.C. 1994, c. 29.

An Act respecting excise taxes

SHORT TITLE

1. Short title.—This Act may be cited as the *Excise Tax Act*.

INTERPRETATION

- 2. (1) Definitions.—In this Act, other than section 121, Part IX and Schedules V, VI and VII.
- "accredited representative".—"accredited representative" means a person who is entitled to the tax exemptions specified in Article 34 of the Convention set out in Schedule I to the Foreign Missions and International Organizations Act or Article 49 of the Convention set out in Schedule II to that Act:
- "Atlantic manufactured tobacco".—"Atlantic manufactured tobacco" means manufactured tobacco
 - (a) in respect of which the excise taxes imposed under section 23 have been paid or are payable at
 - (i) the rates applicable before February 9, 1994,
 - (ii) the rates applicable after February 8, 1994 under paragraphs 1(f), 2(d) and 3(e) of Schedule II, or
 - (iii) the rate applicable after May 31, 1994 and before September 12, 1994 under paragraph 1(e) of Schedule II, and
 - (b) that is marked or stamped "ATLANTIC" or "ATLANTIQUE" to indicate that it is intended for retail sale in the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland but not marked or stamped to indicate that it is intended for retail sale specifically in the Province of Nova Scotia or New Brunswick;
- "black stock".—"black stock" means manufactured tobacco that is
 - (a) stamped in accordance with the *Excise Act* and the departmental regulations made under that Act to indicate that the duties of excise and excise tax imposed on the manufactured tobacco have been paid, and

- (b) not stamped or marked in accordance with any statute of a province to indicate that the manufactured tobacco is intended for retail sale in a particular province or in particular provinces;
- "black stock cigarettes".—"black stock cigarettes" means cigarettes that are black stock;
- "black stock manufactured tobacco".—"black stock manufactured tobacco" means black stock other than cigarettes and tobacco sticks;
- "cigar".—"cigar" has the meaning assigned by section 6 of the Excise Act;
- "cigarette".—"cigarette" has the meaning assigned by section 6 of the Excise Act;
- "cosmetics".—"cosmetics" means goods, whether possessing therapeutic or prophylactic properties or not, commonly or commercially known as toilet articles, preparations or cosmetics, that are intended for use or application for toilet purposes, or for use in connection with the care of the human body, including the hair, nails, eyes, teeth, or any other part or parts thereof, whether for cleansing, deodorizing, beautifying, preserving or restoring, and includes toilet soaps, shaving soaps and shaving creams, skin creams and lotions, shampoos, mouth washes, oral rinses, toothpastes, tooth powders, denture creams and adhesives, antiseptics, bleaches, depilatories, perfumes, scents and similar preparations:
- "diesel fuel".—"diesel fuel" includes any fuel oil that is suitable for use in internal combustion engines of the compression-ignition type, other than any such fuel oil that is intended for use and is actually used as heating oil;
- "duty free shop".—"duty free shop" has the meaning assigned by subsection 2(1) of the *Customs Act*;
- "gasoline".—"gasoline" means gasoline type fuels for use in internal combustion engines other than aircraft engines;
- "health goods".—"health goods" means any material, substance, mixture, compound or preparation, of whatever composition or in whatever form, sold or represented for use in the diagnosis, treatment, mitigation or prevention of a disease, a disorder, an abnormal physical state, or the symptoms thereof in human beings or animals or for use in restoring, correcting or modifying organic functions in human beings or animals;
- "Indian".—"Indian" means a person who is registered under the *Indian Act* as an Indian or is entitled to be registered under that Act as an Indian;
- "licensed tobacco manufacturer".—"licensed tobacco manufacturer" means a tobacco manufacturer, as defined in section 6 of the *Excise Act*, who is licensed as such under that Act;
- "manufactured tobacco".—"manufactured tobacco" has the meaning assigned by section 6 of the *Excise Act*;
- "manufacturer or producer".—"manufacturer or producer" includes
 - (a) the assignee, trustee in bankruptcy, liquidator, executor or curator of any manufacturer or producer and, generally, any person who continues the business of a manufacturer or producer or disposes of his assets in any fiduciary capacity, including a bank exercising any powers conferred upon it by the *Bank Act* and a trustee for bondholders,
 - (b) any person, firm or corporation that owns, holds, claims or uses any patent, proprietary, sales or other right to goods being manufactured, whether by them, in their name or for or on their behalf by others, whether that person, firm or corporation sells, distributes, consigns or otherwise disposes of the goods or not,

- (c) any department of the government of Canada or any province, any board, commission, railway, public utility, manufactory, company or agency owned, controlled or operated by the government of Canada or any province, or under the authority of the legislature or the lieutenant governor in council of any province, that manufactures or produces taxable goods,
- (d) any person who sells, otherwise than in a retail store exclusively and directly to consumers, cosmetics that were not manufactured by him in Canada, other than a person who sells those cosmetics exclusively and directly to hairstylists, cosmeticians and other similar users for use in the provision of personal grooming services and not for resale,

(e) [Repealed.]

- (f) any person who, by himself or through another person acting for him, prepares goods for sale by assembling, blending, mixing, cutting to size, diluting, bottling, packaging or repackaging the goods or by applying coatings or finishes to the goods, other than a person who so prepares goods in a retail store for sale in that store exclusively and directly to consumers.
- (g) any person who imports into Canada new motor vehicles designed for highway use, or chassis therefor.
- (h) any person who sells, otherwise than predominantly to consumers, new motor vehicles designed for highway use, or chassis therefor,
- (i) any person who sells goods enumerated in Schedule III.1, other than a person who sells those goods exclusively and directly to consumers, and
- (j) any person who sells or leases prerecorded video cassettes that are new or have not been used in Canada, other than a person who sells or leases such goods exclusively and directly to consumers other than to consumers who lease such goods to other persons;

"Minister".—"Minister" means

- (a) in or in relation to Part I, the Minister of Finance, and
- (b) in or in relation to any other Part, the Minister of National Revenue;
- "mobile home".—"mobile home" means a trailer unit not less than three metres wide by eight metres long, equipped with complete plumbing, electrical and heating facilities and designed to be towed on its own chassis to a building site for installation on a foundation and connection to service facilities at that site and to be used for residential, commercial, educational, institutional or industrial purposes, but does not include any free-standing appliances or furniture sold with the unit or any travel trailer, motor home, camping trailer or other vehicle or trailer for recreational use:
- "modular building unit".—"modular building unit" means a building component or unit, the manufacture and assembly of which is completed or substantially completed before delivery to a construction site, that is designed for installation on a foundation and is composed of at least one room or area with finished walls, a finished floor and a finished ceiling, including installed plumbing, heating and electrical equipment appropriate to that room or area, and that, when installed on a foundation at the site, with or without other similarly manufactured and assembled components or units, forms a complete residential, commercial, educational, institutional or industrial building, but does not include any free-standing appliances or furniture sold with the unit;

[&]quot;municipality".—"municipality" means

- (a) an incorporated city, town, village, metropolitan authority, township, district, county or rural municipality or other incorporated municipal body however designated, or
- (b) such other local authority as the Minister may determine to be a municipality for the purposes of this Act;
- "operator".—"operator" of a duty free shop means the person operating the duty free shop who is licensed as a wholesaler under Part VI and is deemed by subsection 55(2) to be a bona fide wholesaler or jobber;
- "person".—"person" means an individual, partnership, corporation, trust, estate, or a body that is a society, union, club, association, commission or other organization of any kind whatever;
- "prescribed".—"prescribed" means
 - (a) in the case of a form, the information to be given on a form or the manner of filing a form, prescribed by the Minister, and
 - (b) in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation;
- "stamp" or "excise stamp".—"stamp" or "excise stamp" means a stamp prepared for the purposes of this Act pursuant to a direction of the Minister under section 60;
- "telecommunication".—[Repealed.]
- "this Act".—"this Act" means this Act except Part IX and Schedules V, VI and VII.
- "tobacco stick".—"tobacco stick" has the meaning assigned by section 6 of the Excise Act;
- (2) **Application to Territories.**—For the purposes of this Act, the expression "Her Majesty in right of a province" includes the governments of the Yukon Territory, the Northwest Territories and Nunavut and the expression "legislature of any province" includes the Council of the Yukon Territory, the Council of the Northwest Territories and the Legislative Assembly of Nunavut.
 - (2.1) Arm's length.—For the purposes of this Act,
 - (a) related persons shall be deemed not to deal with each other at arm's length; and
 - (b) it is a question of fact whether persons not related to each other were, at any particular time, dealing with each other at arm's length.
- (2.2) **Related persons.**—For the purposes of this Act, persons are related to each other if they are related persons within the meaning of subsections 251(2) to (6) of the *Income Tax Act*, except that
 - (a) references in those subsections to "corporation" shall be read as references to "corporation or partnership"; and
 - (b) references in those subsections to "shares" or "shareholders" shall, in respect of a partnership, be read as references to "rights" or "partners", respectively.
- (3) **Importer deemed manufacturer or producer.**—For the purposes of this Act, a person who is a manufacturer or producer within the meaning of paragraph (d), (i) or (j) of the definition of that term in subsection (1), other than a member of a class of small manufacturer or producer that is exempted by regulations made under subsection 54(2) from the requirement of subsection 54(1) to apply for a licence, and who imports into Canada
 - (a) cosmetics,
 - (b) [Repealed.]

- (c) goods enumerated in Schedule III.1, or
- (d) prerecorded video cassettes that are new or have not been used in Canada

shall be deemed to be the manufacturer or producer in Canada thereof and not the importer thereof and the goods shall be deemed to be goods produced or manufactured in Canada and not imported goods.

- (4) Goods deemed not to be imported.—For the purposes of this Act, goods imported into Canada by a person who is a manufacturer or producer within the meaning of paragraph (f) of the definition of that term in subsection (1), other than a member of a class of small manufacturer or producer that is exempted by virtue of regulations made under subsection 54(2) from the requirement of subsection 54(1) to apply for a licence, that are prepared, as described in that paragraph, by or on behalf of that person in Canada for sale shall be deemed to be goods produced or manufactured in Canada and not imported goods.
- (4.1) **Importer deemed manufacturer or producer.**—For the purposes of this Act, a person who is a manufacturer or producer within the meaning of paragraph (g) of the definition of that term in subsection (1), other than a member of a class of small manufacturer or producer that is exempted by virtue of regulations made under subsection 54(2) from the requirement of subsection 54(1) to apply for a licence, and who imports new motor vehicles designed for highway use, or chassis therefor, into Canada shall be deemed to be the manufacturer or producer in Canada thereof and not the importer thereof and the vehicles or chassis shall be deemed to be goods produced or manufactured in Canada and not imported goods.
- (4.2) Goods deemed not to be imported.—For the purposes of this Act, new motor vehicles designed for highway use, and chassis therefor, imported into Canada that are sold by a person who is a manufacturer or producer within the meaning of paragraph (h) of the definition of that term in subsection (1), other than a member of a class of small manufacturer or producer that is exempted by virtue of regulations made under subsection 54(2) from the requirement of subsection 54(1) to apply for a licence, shall be deemed to be goods produced or manufactured in Canada and not imported goods.
- (5) **Idem.**—For the purposes of this Act, a licensed wholesaler who gives away without charge, as free samples, replacement goods or parts or otherwise, goods on which taxes have not been paid under this Act is deemed to have retained the goods for his own use, unless
 - (a) he gives them away as free replacement goods or parts under a written warranty of the manufacturer of the goods to be replaced or of the goods into which the parts are to be incorporated; and
 - (b) the amount, if any, charged for the warranty is included in the sale price charged by the manufacturer for the goods to be replaced or the goods into which the parts are to be incorporated or, if those goods are imported goods, in the duty paid value thereof.
- (5.1) **Retroactive effect.**—For the purposes of this Act, a determination under paragraph (b) of the definition "municipality" in subsection (1) shall, if it so provides, be retroactive and be deemed to have come into force on a day prior to the day on which it is made, which prior day shall not be more than four years before the day on which the determination is made.
- (6) **References to tax etc. under Act.**—Any reference in a regulation or order made before 1991 under an Act of Parliament to a refund, remission or other relief from or in respect of a tax, duty, excise or levy under
 - (a) the Excise Tax Act,
 - (b) the laws relating to customs or customs duties, or

- (c) the laws relating to excise or duties of excise
- shall, except where the regulation or order otherwise expressly provides, be deemed not to include a reference to a refund, remission or other relief from the tax imposed under Part IX.
- (7) Atlantic Provinces markings.—For the purposes of Parts III and VII and Schedule II, manufactured tobacco that is marked or stamped "ATLANTIC" or "ATLANTIQUE" to indicate that it is intended for retail sale in the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland shall be deemed not to be marked or stamped in accordance with a statute of the Province of Nova Scotia or New Brunswick to indicate that it is intended for retail sale in that province. R.S.C. 1985, c. 15 (1st Supp.), s. 1; R.S.C. 1985, c. 7 (2nd Supp.), s. 1; R.S.C. 1985, c. 12 (4th Supp.), s. 1; S.C. 1990, c. 45, s. 1; S.C. 1993, c. 25, s. 54; S.C. 1993, c. 28, s. 78; S.C. 1993, c. 38, s. 86; S.C. 1994, c. 29, s. 1.

PART I

INSURANCE PREMIUMS OTHER THAN MARINE

- 3. Definitions.—In this Part.
- "exchange".—"exchange" means a group of persons formed for the purpose of exchanging reciprocal contracts of indemnity or inter-insurance with each other through the same attorney;
- "insurer".—"insurer" means any corporation incorporated for the purpose of carrying on the business of insurance, any association of persons formed on the plan known as Lloyds whereby each associate underwriter becomes liable for a stated, limited or proportionate part of the whole amount insured under a contract of insurance, and any exchange;
- "net premiums".—"net premiums" means the gross premiums paid or payable under a contract of insurance, less dividends received or receivable in respect of the contract and less premiums returned on cancellation of the contract;
- "Superintendent".—"Superintendent" means the Superintendent of Financial Institutions appointed pursuant to subsection 5(1) of the Office of the Superintendent of Financial Institutions Act. R.S.C. 1985, c. 18 (3rd Supp.), s. 35.
- **4.** (1) Tax on premiums in respect of insurance effected outside Canada.—Every person resident in Canada by whom or on whose behalf a contract of insurance, other than a contract of reinsurance, is entered into or renewed against a risk ordinarily within Canada at the time the contract is entered into or renewed,
 - (a) with
 - (i) any insurer not incorporated under the laws of Canada or of any province or not formed in Canada, or
 - (ii) any exchange having its chief place of business outside Canada or having a principal attorney-in-fact whose chief place of business is outside Canada,
 - that at the time the contract is entered into or renewed is not authorized under the laws of Canada or of any province to transact the business of insurance, or
 - (b) with any insurer that at the time the contract is entered into or renewed is authorized under the laws of Canada or of any province to transact the business of insurance, if the contract is entered into or renewed through a broker or agent outside Canada,
- shall, on or before April 30 in each year, pay to the Minister, in addition to any other tax payable

under any other law, a tax of ten per cent on the net premiums paid or payable during the immediately preceding calendar year in respect of that insurance.

- (2) Application.—Subsection (1) does not apply to
- (a) any contract of life insurance, personal accident insurance, sickness insurance or insurance against marine risks, or any contract of insurance against nuclear risks to the extent that the insurance against nuclear risks is not, in the opinion of the Superintendent, available within Canada; or
- (b) any other contract of insurance entered into after February 19, 1973 to the extent that the insurance is not, in the opinion of the Superintendent, available within Canada.
- (3) **Residence of corporation.**—For the purposes of this section, every corporation carrying on business in Canada shall be deemed to be a person resident in Canada.
- (4) **Through whom contract made.**—Where a contract of insurance is entered into or renewed through more than one broker or agent, or where payment of the premium or any part of the premium thereon is effected through more than one broker or agent, the contract shall, for the purposes of this Part, be deemed to have been entered into or renewed, as the case may be, through the broker or agent directly retained or instructed by the insured and not through any other broker or agent.
- **5.** (1) **Returns.**—Every person to whom section 4 applies shall, on or before April 30 in each year, make a return in writing to the Minister stating, with respect to each contract of insurance entered into or renewed by him or on his behalf during the immediately preceding calendar year and on which the net premiums are taxable under section 4,
 - (a) the name of the insurer;
 - (b) the amount of the insurance;
 - (c) the net premiums paid or payable during the immediately preceding calendar year; and
 - (d) if the contract was entered into or renewed as described in paragraph 4(1)(b), the name and address of the broker or agent outside Canada through whom the contract was entered into or renewed.
- (2) **Return by broker or agent.**—Every person who, acting as a broker or agent, obtains, effects or places or assists in obtaining, effecting or placing any contract of insurance entered into or renewed as described in paragraph 4(1)(a), and on which the net premiums are taxable under section 4, shall, on or before March 15 in each year, make a return in writing to the Minister stating, with respect to each contract so entered into or renewed during the immediately preceding calendar year, the name and address of the person resident in Canada by whom or on whose behalf the contract was entered into or renewed and the net premiums paid or payable during that year.
- (3) **Return by insurer.**—Every insurer that enters into or renews a contract of insurance as described in paragraph 4(1)(b), and on which the net premiums are taxable under section 4, shall, on or before March 15 in each year, make a return in writing to the Minister stating, with respect to each contract so entered into or renewed during the immediately preceding calendar year,
 - (a) the name and address of each person resident in Canada with whom or on whose behalf the contract was entered into or renewed;
 - (b) the net premiums paid or payable during the immediately preceding calendar year; and
 - (c) the name and address of the broker or agent outside Canada through whom the contract was entered into or renewed. R.S.C. 1985, c. 7 (2nd Supp.), s. 2.

- **6. Examination of books and records.**—The Superintendent or any officer or employee of the Office of the Superintendent appointed by the Superintendent may visit the office of any insurer, broker or agent and examine that person's books and records for the purpose of verifying any return required by this Part, and the Superintendent and that officer or employee have a right of access to those books and records at all reasonable hours. S.C. 1992, c. 1, s. 64.
- 7. (1) Penalty and interest for default.—Every person who refuses or neglects to make a return as required by subsection 5(1) or neglects to pay some or all of the tax imposed by section 4 is liable to a penalty of five per cent of the amount of tax unpaid at the expiration of the time for filing the return together with interest on the amount unpaid calculated at the prescribed rate from April 30 in the year in which that amount is payable to the day of payment.
- (2) **Idem.**—Every person who refuses or neglects to make a return as required by subsection 5(2) or (3) is liable to a penalty of ten dollars for each day of default or fifty dollars, whichever is the lesser. R.S.C. 1985, c. 7 (2nd Supp.), s. 3.

PART II

AIR TRANSPORTATION TAX

Interpretation

- 8. Definitions.—In this Part,
- "air carrier".—"air carrier" means a person who provides transportation of a person by air;
- "certified air carrier".—"certified air carrier" means
 - (a) an air carrier who is authorized by the National Transportation Agency under Part II of the *National Transportation Act*, 1987 to operate a domestic air service or an international service, and
 - (b) an air carrier, other than an air carrier described in paragraph (a), who, personally or by agent, sells in Canada transportation of a person by air that is to be provided in whole or in part by an air carrier described in paragraph (a);
- "emplanement".—"emplanement" does not include an emplanement resulting from a landing of an aircraft made solely to obtain ground services for the aircraft;
- "licensed air carrier".—"licensed air carrier" means a certified air carrier to whom a licence has been granted under section 17;
- "tax".—"tax" means the air transportation tax imposed under this Part;
- "taxation area".—"taxation area" means
 - (a) Canada,
 - (b) the United States (except Hawaii), and
 - (c) the Islands of St. Pierre and Miquelon. R.S.C. 1985, c. 15 (1st Supp.), s. 2; R.S.C. 1985, c. 28 (3rd Supp.), s. 287.

Her Majesty

9. Binding on Her Majesty.—This Part is binding on Her Majesty in right of Canada or a province.

Tax Imposed

- 10. (1) Tax imposed.—There shall be imposed, levied and collected an air transportation tax, determined under section 11, on each amount paid or payable in Canada for transportation of a person by air where that transportation begins at a point in the taxation area and ends at a point in the taxation area.
- (2) **Idem.**—There shall be imposed, levied and collected an air transportation tax, determined under section 11, on each amount paid or payable outside Canada for the transportation of a person by air where that transportation
 - (a) begins at a point in the taxation area and ends at a point in the taxation area, and
 - (b) includes an emplanement by the person on an aircraft at an airport in Canada on a specific flight having as a destination an airport in the taxation area outside Canada and subsequent deplanement by the person from the flight at an airport outside Canada,

payable by the person at the time when, in respect of the transportation, he emplanes at the airport in Canada described in paragraph (b) on the aircraft therein described, except where the air transportation tax has been paid before that time to a licensed air carrier or his agent and evidence of the prepayment of tax is submitted by the person, in a manner and form and to a member of a class of persons prescribed by regulation of the Governor in Council.

- (3) **Transportation by air.**—For the purposes of subsection (1), transportation by air begins at a point in the taxation area and ends at a point in the taxation area if the transportation does not include a departure, destination or intermediate stop, other than a transfer stop, outside the taxation area.
- (4) **Idem.**—For the purposes of subsection (2), transportation by air begins at a point in the taxation area and ends at a point in the taxation area if the transportation
 - (a) does not include a departure, destination or intermediate stop, other than a transfer stop, outside the taxation area; and
 - (b) includes at least one departure from a point in Canada, other than a departure resulting from a transfer stop, R.S.C. 1985, c. 15 (1st Supp.), s. 3.
- 11. (1) Amount of tax.—Subject to subsections (2) and (2.1), the tax imposed under subsection 10(1) or (2) on each amount paid or payable for transportation of a person by air shall be an amount that is the lesser of
 - (a) the aggregate of
 - (i) 7% on each amount paid or payable, and
 - (ii) \$6 or such lesser amount as may, for the purposes of this subparagraph, be prescribed by order of the Governor in Council on the recommendation of the Minister of Transport, and
 - (b) such amount as may, for the purposes of this subsection, be prescribed by order of the Governor in Council on the recommendation of the Minister of Transport.
- (2) Charter flights.—Where the amount paid or payable in Canada for air transportation is for transportation by an aircraft that has been chartered for the purpose by one or more charterers, the tax imposed under subsection 10(1) on the amount paid or payable to a certified air carrier by each charterer shall be an amount that is the lesser of
 - (a) the aggregate of
 - (i) 7% on each amount paid or payable, and

- (ii) \$3 in respect of each emplanement, pursuant to the charter agreement of that charterer, on the aircraft by any person, and
- (b) the aggregate of such amount as may, for the purposes of this subsection, be prescribed by order of the Governor in Council on the recommendation of the Minister of Transport, in respect of each emplanement, pursuant to the charter agreement of that charterer, on the aircraft by any person.
- (2.1) Amount of tax imposed on amount paid outside Canada where tax payable in Canada.—Where the tax imposed under subsection 10(2) on an amount paid or payable outside Canada for transportation of a person by air is payable by the person at the time he emplanes at an airport in Canada and evidence of the amount paid or payable for the transportation is not submitted, in the manner and form prescribed by regulation of the Governor in Council, by the person to the licensed air carrier required by this Part to collect the tax in Canada, and an amount is prescribed by order of the Governor in Council pursuant to paragraph (1)(b), the tax payable by the person shall be the amount so prescribed.
- (3) When tax not payable.—The tax imposed by subsection 10(1), as determined under subsection (1), on each amount paid or payable for transportation of a person by air is not payable in the case of transportation purchased as part of a continuous journey where
 - (a) the journey includes a charter flight in respect of which tax is imposed under section 10 or 12; and
 - (b) evidence of the continuous journey is submitted by the person to the licensed air carrier or his agent from whom the transportation by air is purchased. R.S.C. 1985, c. 15 (1st Supp.), s. 4; R.S.C. 1985, c. 7 (2nd Supp.), s. 4; R.S.C. 1985, c. 42 (2nd Supp.), s. 1; R.S.C. 1985, c. 12 (4th Supp.), s. 2; S.C. 1990, c. 45, s. 2; S.C. 1994, c. 29, s. 2.
- 12. (1) Specific tax.—There shall be imposed, levied and collected an air transportation tax, determined under section 13, on each amount paid or payable in Canada for transportation of a person by air where that transportation begins at a point in the taxation area and ends at a point outside the taxation area.
- (2) **Idem.**—There shall be imposed, levied and collected an air transportation tax, determined under section 13, on each amount paid or payable outside Canada for the transportation of a person by air where such transportation
 - (a) begins at a point in the taxation area and ends at a point outside the taxation area, and
 - (b) includes an emplanement by the person on an aircraft at an airport in Canada on a specific flight having as a destination an airport outside Canada and subsequent deplanement by the person from the flight at an airport outside Canada,

payable by the person at the time when, in respect of the transportation, he emplanes at the airport in Canada described in paragraph (b) on the aircraft therein described, except where the air transportation tax has been paid before that time to a licensed air carrier or his agent and evidence of the prepayment of tax is submitted by the person, in a manner and form and to a member of a class of persons prescribed by regulation of the Governor in Council.

- (3) **Transportation by air.**—For the purposes of subsection (1), transportation by air begins at a point in the taxation area and ends at a point outside the taxation area if the transportation or any part thereof includes at least one departure from a point in the taxation area, other than a departure resulting from a transfer stop, to a destination outside the taxation area.
- (4) **Idem.**—For the purposes of subsection (2), transportation by air begins at a point in the taxation area and ends at a point outside the taxation area if the transportation or any part

thereof includes at least one departure from a point in Canada, other than a departure resulting from a transfer stop, to a destination outside the taxation area, whether or not there are any intermediate stops. R.S.C. 1985, c. 15 (1st Supp.), s. 5.

- 13. (1) Amount of tax.—Subject to subsection (2), the tax imposed under subsection 12(1) for transportation of a person by air shall be
 - (a) an amount that is the lesser of
 - (i) \$50, and
 - (ii) such amount as may, for the purposes of this subsection, be prescribed by order of the Governor in Council on the recommendation of the Minister of Transport; or
 - (b) fifty per cent of the amount provided in paragraph (a) when the person is a child under twelve years of age and is being transported at a fare reduced fifty per cent or more below the applicable fare.
- (2) **Charter flights.**—Where the amount paid or payable in Canada for air transportation is for transportation by an aircraft that has been chartered for the purpose by one or more charterers, the tax imposed under subsection 12(1) on the amount paid or payable to a certified air carrier by each charterer shall be an amount that is the aggregate of
 - (a) the lesser of
 - (i) \$50, and
 - (ii) such amount as may, for the purposes of this subsection, be prescribed by order of the Governor in Council on the recommendation of the Minister of Transport,

in respect of each emplanement, pursuant to the charter agreement of that charterer, on the aircraft by a person, other than a person described in paragraph (b); and

- (b) fifty per cent of the amount provided in paragraph (a) in respect of each emplanement, pursuant to the charter agreement of that charterer, on the aircraft by a child who is under twelve years of age and is being transported at a fare reduced fifty per cent or more below the applicable fare.
- (2.1) **Definition of "emplanement".**—For the purposes of subsection (2), "emplanement" means an emplanement by a person at an airport in Canada on a specific flight that has as a destination an airport outside Canada and from which the person deplanes at an airport outside Canada.
- (2.2) **Amount of tax.**—The tax imposed under subsection 12(2) for transportation of a person by air shall be
 - (a) where the first emplanement of the person occurs at an airport in Canada,
 - (i) an amount that is the lesser of
 - (A) \$50, and
 - (B) such amount as may, for the purposes of this paragraph, be prescribed by order of the Governor in Council on the recommendation of the Minister of Transport, or
 - (ii) 50% of the amount provided in subparagraph (i) where the person is a child under twelve years of age and is being transported at a fare reduced 50% or more below the applicable fare; and
 - (b) in any other case,
 - (i) an amount that is the lesser of
 - (A) \$25, and

- (B) such amount as may, for the purposes of this paragraph, be prescribed by order of the Governor in Council on the recommendation of the Minister of Transport, or
- (ii) 50% of the amount provided in subparagraph (i) where the person is a child under twelve years of age and is being transported at a fare reduced 50% or more below the applicable fare.
- (3) **Non-application.**—Subsections 12(1) and (2) do not apply in respect of the transportation of a person by air at a fare ninety per cent or more below the applicable fare. R.S.C. 1985, c. 15 (1st Supp.), s. 6; R.S.C. 1985, c. 12 (4th Supp.), s. 3; S.C. 1990, c. 45, s. 3; S.C. 1994, c. 29, s. 3.
- **13.1** (1) More than one amount payable.—Notwithstanding sections 11 and 13 but subject to subsection 11(3) and subsection (2) of this section, where two or more amounts are paid or payable at the same time for transportation of a person by air on a continuous journey,
 - (a) the total of the taxes imposed on all such amounts under subsection 10(1) or (2), determined under subsection 11(1), shall not exceed the lesser of
 - (i) the total of 7% of the total of all such amounts and \$6, and
 - (ii) the amount, if any, prescribed by order of the Governor in Council under paragraph 11(1)(b);
 - (b) the total of the taxes imposed on all such amounts under subsections 10(1) and 12(1), determined under subsections 11(1) and 13(1), as applicable, shall not exceed the amount determined under subsection 13(1) in respect of any such amount in respect of which that subsection applies; and
 - (c) the total of the taxes imposed on all such amounts under subsections 10(2) and 12(2), determined under subsections 11(1) and 13(2.2), as applicable, shall not exceed the largest amount determined under subsection 13(2.2) in respect of any such amount.
- (2) **Restriction on reduction of tax.**—Subsection (1) does not apply to reduce any tax imposed under this Part in respect of transportation of a person by air unless the licensed air carrier or the carrier's agent from whom the transportation is purchased records on each ticket issued at the same time the following information:
 - (a) ticket numbers, including air carrier codes, for all flights comprising the continuous journey; and
 - (b) flight numbers for all flights comprising the continuous journey. R.S.C. 1985, c. 15 (1st Supp.), s. 7; R.S.C. 1985, c. 7 (2nd Supp.), s. 5; R.S.C. 1985, c. 12 (4th Supp.), s. 4; S.C. 1990, c. 45, s. 4; S.C. 1994, c. 29, s. 4.
- **14.** When and by whom tax payable.—The tax on each amount paid or payable in Canada for transportation of a person by air is payable
 - (a) at the time when the amount is so paid or becomes payable and in any case prior to the provision of the transportation; and
 - (b) by the person making the payment.
- 15. Employees of foreign country.—This Part does not apply in the case of any amount paid for transportation by air of a person described in section 2 of Part II of Schedule III.
- **16.** (1) **Amount deemed paid in Canada.**—Where an amount is paid or payable outside Canada for the transportation of a person by air
 - (a) by transmission from within Canada to a place outside Canada, by means of telegraph

or mail, of cash, cheque, postal telegram, money order or any similar draft to a ticket office, travel agency, air carrier or any representative of any of them,

- (b) by delivery of the amount to an agency located within Canada for transmission to a ticket office, travel agency, air carrier or any representative of any of them located in any place outside Canada, or
- (c) by any other arrangement with a person outside Canada for the benefit or convenience of a person in Canada,

the amount shall, for the purposes of this Part, be deemed to be an amount paid or payable in Canada and not outside Canada.

(2) Charter flights.—Where an amount is paid or payable outside Canada for the charter of an aircraft for the transportation of a person by air and the transportation begins at a point in Canada, the amount shall, for the purposes of this Part, be deemed to be an amount paid or payable in Canada and not outside Canada.

Licences

- 17. (1) Duty to apply for licence.—Subject to this section, every certified air carrier, other than an air carrier that provides only air transportation that is exempt from the operation of this Part pursuant to paragraph 21(d), shall make an application in the prescribed form to the Minister for a licence for the purposes of this Part.
- (2) **Granting of licence.**—The Minister may grant a licence to any person applying therefor under subsection (1).
- (3) Cancellation.—The Minister may cancel a licence issued under this Part if, in his opinion, it is no longer required for the purposes of this Part. R.S.C. 1985, c. 7 (2nd Supp.), s. 6.

Collection of Tax

- **18.** (1) **Duty of licensed air carrier.**—Every licensed air carrier is an agent of the Minister and as such shall, as provided in this section,
 - (a) levy and collect any taxes imposed by this Part for the transportation of a person by air; and
 - (b) make adjustments in or refund any portion of the tax paid on the transportation of a person by air that has not been provided or only partially provided or any tax that has been collected in error by the licensed air carrier.
- (2) Collection of tax.—The tax imposed by this Part on each amount paid or payable in Canada for transportation of a person by air shall be collected by the licensed air carrier to whom payment for the transportation is made or is owing.
- (3) **Idem.**—The tax imposed by this Part on each amount paid or payable outside Canada for transportation of a person by air that is payable by the person at the time when he emplanes on an aircraft at an airport in Canada shall be collected by the licensed air carrier on whose aircraft the person emplanes, in this subsection referred to as the "emplaning air carrier", except where the air transportation tax has been paid before that time to a licensed air carrier or his agent and evidence of the prepayment of tax is submitted by the person to the emplaning air carrier in a manner and form prescribed by regulation of the Governor in Council.
- (4) **Idem.**—In the case of tax imposed by this Part on any amount paid or payable in Canada for transportation of a person by air, where the transportation of a person by air is being provided by several air carriers, one or more of whom are licensed, the tax, where applicable,

shall be collected by the licensed air carrier who sells the transportation by air or, if the transportation is not sold by a licensed air carrier, by the first licensed air carrier who provides any part of the transportation.

- (5) Adjustments and refunds where tax reduced for continuous journey.—Where tax has been reduced pursuant to subsection 13.1(1) in respect of two or more amounts paid or payable at the same time for transportation of a person by air on a continuous journey, no adjustment in or refund of all or any portion of the tax paid shall be made unless all of the tickets purchased at the same time for the transportation are cancelled at the same time. R.S.C. 1985, c. 15 (1st Supp.), s. 8; R.S.C. 1985, c. 28 (3rd Supp.), s. 288.
- 19. (1) Debt to Her Majesty.—Every person who, being required by or pursuant to this Part to collect an air transportation tax, fails to do so as required is liable to Her Majesty for the amount of the tax and that amount is recoverable in the Federal Court or in any other court of competent jurisdiction as a debt due to Her Majesty.
- (2) **Persons deemed agents.**—A person who, not being a licensed air carrier, sells in Canada transportation of a person by air that is to be provided in whole or in part by a licensed air carrier is, in respect of the payment for that transportation and for the purposes of this Part, the agent of the first licensed air carrier who provides the transportation by air or any part thereof, as the case may be, and that person shall levy and collect on behalf of that licensed air carrier the taxes imposed by this Part and transmit them to the licensed air carrier.

Penalty on Failure to File Return

- **20.** (1) **Monthly return of taxes.**—Every licensed air carrier that is required by this Part to collect tax shall make each month a true return, in the prescribed form and containing the prescribed information including statistical information relating to any tax not collected by the licensed air carrier during that period by reason of the prepayment thereof, of
 - (a) all amounts collected or collectible by the carrier by way of the tax imposed by this Part in the last preceding month; and
 - (b) all amounts collected, within or outside Canada by the carrier or the carrier's agent in the last preceding month,
 - (i) by way of the tax imposed by this Part on amounts paid or payable outside Canada for the transportation of a person by air, and
 - (ii) before the time that the person is required by subsection 10(2) or 12(2), as the case may be, to pay the tax.
- (2) **Nil return.**—Every licensed air carrier shall, if no amounts have been collected or are collectible as described in subsection (1) in the last preceding month, make a return as required by that subsection stating that fact.
- (3) **Alternate periods for making returns.**—Notwithstanding subsections (1) and (2), the Minister may, by regulation,
 - (a) authorize any licensed air carrier to make a return in respect of any accounting period of not less than twenty-one days and not more than thirty-five days;
 - (b) authorize any licensed air carrier to make a return in respect of any period longer than one month but not longer than six months, if the amounts collected or collectible by the carrier by way of the tax imposed by this Part in the last preceding calendar year did not exceed four thousand eight hundred dollars; or
 - (c) authorize any licensed air carrier whose passenger air transportation service is

predominantly limited to a seasonal period of operation to make a return in respect of any period longer than one month but not longer than six months, if the amounts collected or collectible by the carrier by way of the tax imposed by this Part in the equivalent period in the last preceding calendar year did not exceed an average of four hundred dollars per month throughout that equivalent period.

- (4) **Date for filing and remittance.**—Subject to subsection (8) and sections 20.1 and 79.2, the return required by this section shall be filed and the taxes that are collected or collectible by a licensed air carrier shall be remitted
 - (a) in a case where the return is required to be made in accordance with subsection (1) or (2), not later than the last day of the first month following the month to which the return relates:
 - (b) in a case where the return is authorized to be made in accordance with a regulation made under paragraph (3)(a), not later than the last day of the first authorized accounting period following the end of the accounting period to which the return relates; and
 - (c) in a case where the return is authorized to be made in accordance with a regulation made under paragraph (3)(b) or (c), not later than the last day of the first month following the end of the period to which the return relates.
- (5) **Penalty and interest on default in remitting taxes.**—Subject to subsections (6) to (9), a licensed air carrier that defaults in remitting tax within the time prescribed by subsection (4), in addition to the amount in default, shall pay
 - (a) in the case of tax required to be remitted not later than the last day of a month, a penalty of one-half of one per cent and interest at the prescribed rate, in respect of each month or fraction of a month between that day and the day on which the total tax, penalty and interest outstanding is remitted, calculated on the total tax, penalty and interest outstanding in that month or fraction of a month; and
 - (b) in the case of tax required to be remitted not later than the last day of an accounting period, a penalty of one-half of one per cent and interest at the prescribed rate, in respect of each accounting period or fraction of an accounting period between that day and the day on which the total tax, penalty and interest outstanding is remitted, calculated on the total tax, penalty and interest outstanding in that accounting period or fraction of an accounting period.
- (6) **Minimum penalty and interest.**—No penalty or interest is payable under subsection (5) if the licensed air carrier remits all taxes collected or collectible by the carrier under this Part and, at the time of the remittance, the total penalty and interest payable is less than ten dollars.
- (7) Time for paying penalty or interest.—A licensed air carrier that is liable to pay penalty or interest under subsection (5) shall pay the penalty or interest not later than the last day of the month or accounting period in respect of which the penalty or interest was calculated.
- (8) **Extension.**—The Minister may, before or after the expiration of the time prescribed by subsection (4), extend in writing the time for filing a return or remitting any tax, and where the Minister so extends the time,
 - (a) the return shall be filed or the tax shall be remitted within the time as so extended;
 - (b) interest accrues under subsection (5) in respect of the tax as if the time had not been so extended:

- (c) no penalty accrues or shall be deemed to have accrued under subsection (5) in respect of the tax before the expiration of the time as so extended; and
- (d) penalty accrues under subsection (5) in respect of a default in remitting the tax or any portion thereof within the time as so extended as if the default were a default referred to in that subsection.
- (9) Security.—Where the Minister holds security under section 80.1 for the remittance of any tax under this Part that is not remitted within the time prescribed by subsection (4),
 - (a) interest accrues under subsection (5) in respect of the tax from the expiration of that time; and
 - (b) penalty accrues under subsection (5) only if the total tax, penalty and interest outstanding, as calculated in respect of each month or accounting period or fraction of a month or accounting period during which the default continues, exceeds the value of the security at the time it is accepted by the Minister and, if accruing, the penalty shall be calculated only on the amount of the excess. R.S.C. 1985, c. 15 (1st Supp.), s. 9; R.S.C. 1985, c. 7 (2nd Supp.), s. 7; R.S.C. 1985, c. 12 (4th Supp.), s. 5.
 - **20.1** (1) **Interpretation.**—For the purposes of this section,
 - (a) a licensed air carrier's "instalment base"
 - (i) for a month is the lesser of
 - (A) the tax imposed by this Part that was collected or collectible by that carrier in that month, and
 - (B) the tax so collected or collectible in the last preceding month,
 - (ii) for an accounting period is the lesser of
 - (A) the tax imposed by this Part that was collected or collectible by that carrier in that accounting period, and
 - (B) the tax so collected or collectible in the last preceding accounting period, and
 - (iii) for any other period to which a return relates is the lesser of
 - (A) the tax imposed by this Part that was collected or collectible by that carrier in that period, and
 - (B) the tax so collected or collectible in the last preceding period multiplied by the ratio that the number of days in the period to which the return relates is to the number of days in the last preceding period; and
 - (b) a licensed air carrier is a "large taxpayer" at any particular time if
 - (i) the aggregate amount of taxes payable under Parts II.1, III, IV and VI, other than taxes payable in accordance with the *Customs Act*, and collected or collectible under this Part and Part II.2 by that licensed air carrier in the last preceding calendar year ending at least ninety days, or ninety-one days where that time falls in a leap year, before that time exceeded twelve million dollars, or
 - (ii) the licensed air carrier
 - (A) was, at any time in the last preceding calendar year ending at least ninety days, or ninety-one days where that time falls in a leap year, before that time, a member of a group of associated corporations (within the meaning of section 256 of the *Income Tax Act*) and the aggregate amount of taxes payable under Parts II.1, III, IV and VI, other than taxes payable in accordance with the *Customs Act*, and collected

or collectible under this Part and Part II.2 by the group in that year exceeded twelve million dollars, and

- (B) is not, at that time, authorized to make a return in accordance with a regulation made under paragraph 20(3)(b) or (c).
- (2) **Instalment payments by large taxpayers.**—A large taxpayer that is required to file a return and remit tax within the time prescribed by subsection 20(4) shall pay instalments on account of the tax in accordance with the following rules:
 - (a) in the case where the return is required to be made in accordance with subsection 20(1), the large taxpayer shall pay two instalments, each equal to one-half of the taxpayer's instalment base for the month in which the tax was collected or became collectible, the first to be paid not later than the last day of that month and the second not later than the fifteenth day of the next following month; and
 - (b) in the case where the return is authorized to be made in accordance with a regulation made under paragraph 20(3)(a), the large taxpayer shall pay two instalments, each equal to one-half of the taxpayer's instalment base for the accounting period to which the return relates, the first to be paid not later than the last day of that accounting period and the second not later than the fifteenth day of the next following accounting period.
- (3) Instalment payments by other licensed air carriers.—A licensed air carrier, other than a large taxpayer, that is required to file a return and remit tax within the time prescribed by subsection 20(4) shall pay an instalment on account of the tax in accordance with the following rules:
 - (a) in the case where the return is required to be made in accordance with subsection 20(1), the carrier shall pay an instalment, equal to the carrier's instalment base for the month in which the tax was collected or became collectible, not later than the twenty-first day of the next following month;
 - (b) in the case where the return is authorized to be made in accordance with a regulation made under paragraph 20(3)(a), the carrier shall pay an instalment, equal to the carrier's instalment base for the accounting period to which the return relates, not later than the twenty-first day of the next following accounting period; and
 - (c) in the case where the return is authorized to be made in accordance with a regulation made under paragraph 20(3)(b) or (c), the carrier shall pay an instalment, equal to the carrier's instalment base for the period to which the return relates, not later than the twenty-first day of the month next following the end of that period.
- (4) **Penalty and interest on default by large taxpayer in paying instalment.**—Subject to subsections (6) to (8), a large taxpayer that defaults in paying an instalment within the time prescribed by subsection (2) shall, in addition to the amount in default, pay in respect of the period between the end of that time and the end of the time prescribed for remittance of the tax on account of which the instalment was payable
 - (a) in the case of an instalment required to be paid not later than the last day of a month or an accounting period, a penalty of one-half of one per cent and interest at the prescribed rate, calculated on the amount by which
 - (i) one-half of the taxpayer's instalment base for that month or accounting period exceeds
 - (ii) the aggregate of all taxes on account of which the instalment was payable that were remitted not later than that day; and

- (b) in the case of an instalment required to be paid not later than the fifteenth day of a month or an accounting period, a penalty of one-quarter of one per cent and interest at one-half of the prescribed rate, calculated on the amount by which
 - (i) one-half of the taxpayer's instalment base for the last preceding month or accounting period

exceeds

- (ii) the amount by which the aggregate of all taxes on account of which the instalment was payable that were remitted not later than that day exceeds the lesser of
 - (A) the aggregate of all taxes on account of which the instalment was payable that were remitted not later than the last day of the last preceding month or accounting period, and
 - (B) one-half of the taxpayer's instalment base for the last preceding month or accounting period.
- (5) Penalty and interest on default by other licensed air carriers in paying instalment.—Subject to subsections (6) to (8), a licensed air carrier that defaults in paying an instalment within the time prescribed by subsection (3) shall, in addition to the amount in default, pay in respect of the period between the end of that time and the end of the time prescribed for remittance of the tax on account of which the instalment was payable
 - (a) in the case of an instalment required by paragraph (3)(a) or (b) to be paid not later than the twenty-first day of a month or an accounting period, a penalty of one-sixth of one per cent and interest at one-third of the prescribed rate, calculated on the amount by which
 - (i) the carrier's instalment base for the last preceding month or accounting period exceeds
 - (ii) the aggregate of all taxes on account of which the instalment was payable that were remitted not later than that day; and
 - (b) in the case of an instalment required by paragraph (3)(c) to be paid not later than the twenty-first day of a month next following the end of a period, a penalty of one-sixth of one per cent and interest of one-third of the prescribed rate, calculated on the amount by which
 - (i) the carrier's instalment base for that period exceeds
 - (ii) the aggregate of all taxes on account of which the instalment was payable that were remitted not later than that day.
- (6) **Minimum penalty and interest.**—No penalty or interest is payable under subsection (4) or (5) if the large taxpayer or other licensed air carrier liable to pay the instalment remits all taxes collected or collectible by the taxpayer or carrier under this Part and, at the time of the remittance, the total penalty and interest payable in respect of the instalment is less than five dollars and in respect of all those taxes is less than ten dollars.
- (7) **Time for paying penalty or interest.**—A large taxpayer or other licensed air carrier that is liable to pay penalty or interest under subsection (4) or (5) in respect of a default in paying an instalment shall pay the penalty or interest within the time prescribed by subsection 20(4) for the remittance of the tax on account of which the instalment is payable.
- (8) **Extension.**—The Minister may, before or after the expiration of the time prescribed by subsection (2) or (3), extend in writing the time for paying an instalment, for any period

within the time prescribed by subsection 20(4) for the remittance of the tax on account of which the instalment is payable, and where the Minister so extends the time

- (a) the instalment shall be paid within the time as so extended;
- (b) interest accrues under subsection (4) or (5), as the case may be, in respect of the instalment as if the time had not been so extended;
- (c) no penalty accrues or shall be deemed to have accrued under subsection (4) or (5), as the case may be, in respect of the instalment before the expiration of the time as so extended; and
- (d) penalty accrues under subsection (4) or (5), as the case may be, in respect of a default in paying an instalment within the time as so extended as if the default were a default referred to in that subsection. R.S.C. 1985, c. 12 (4th Supp.), s. 5.
- **20.2** (1) **Prepaid amounts.**—For greater certainty, amounts collected as described in paragraph 20(1)(b) shall be deemed to be sums payable under this Act.
- (2) **Records and books of account.**—Each licensed air carrier that is required to make a return of the amounts described in paragraph 20(1)(b) shall keep records and books of account in such form and containing such information as will enable the amount of tax or other sums that have been paid to or collected by the carrier or the carrier's agent to be determined and, for the purposes of this subsection, subsections 98(2.1) and (3) and 100(2) apply, with such modifications as the circumstances require, as if the records and books of account were required to be kept by the carrier pursuant to subsection 98(1). R.S.C. 1985, c. 12 (4th Supp.), s. 6.

General

21. Regulations.—The Governor in Council may by regulation

- (a) prescribe, for those cases where the amount charged for transportation by air includes the transportation of persons and goods by air, the manner in which and by whom the amount charged shall be apportioned between the transportation by air of those persons and the transportation by air of those goods, for the purposes of the tax imposed under sections 10 to 12:
- (b) prescribe, for those cases where the amount charged for transportation of a person by air provides him with transportation and other services or goods, the manner in which and by whom the amount charged shall be apportioned between the transportation by air of that person and the provision of the other services and goods, for the purposes of the tax imposed under sections 10 to 12;
- (c) prescribe the manner and form in which and the class of persons to whom evidence of prepayment of any tax imposed under this Part shall be submitted;
- (c.1) prescribe the manner and form in which evidence of an amount paid or payable for transportation of a person by air shall be submitted;
- (d) exempt from the operation of this Part the transportation of a person by air on any classes or groups of air services, air carriers or aircraft;
- (e) reduce the amount of the tax paid or payable in Canada under this Part in respect of transportation of a person by air, or remove that tax, for the reduction or avoidance of double taxation by Canada and a foreign country in respect of that transportation;
- (f) vary the requirements of section 20 with respect to returns and the time of remitting for licensed air carriers who are authorized by the National Transportation Agency to operate

international charter flights from Canada, or exempt those carriers from the provisions of that section with respect to returns, subject to such terms and conditions as the Governor in Council considers to be in the public interest;

- (g) prescribe, in cases where an air carrier provides transportation of a person by air on credit, the time when and the place where the amount payable for that transportation is deemed to be paid or payable for the purposes of this Part; and
- (h) provide generally for the carrying out of the provisions of this Part. R.S.C. 1985, c. 15 (1st Supp.), s. 10; R.S.C. 1985, c. 28 (3rd Supp.), s. 289.

PART II.1

TELECOMMUNICATION PROGRAMMING SERVICES TAX

Interpretation

21.1 (1) Definitions.—In this Part.

- "amount charged".— "amount charged", in respect of a taxable service, means any amount paid or payable by a person for the taxable service, before any amount paid or payable in respect of any tax under this Part or imposed under an Act of the legislature of a province respecting retail sales tax is added thereto;
- "broadcasting".—"broadcasting" means any radiocommunication in which the transmissions are intended for direct reception by the general public;
- "licensee".—"licensee" means any person to whom a licence has been issued under section 21.18 and includes any person who is required by section 21.17 to apply for a licence;
- "programming service".— "programming service" means any presentation of sound or visual matter of a nature or kind broadcast by radio or television stations that is designed to inform, enlighten or entertain;

"small undertaking".—"small undertaking" means

- (a) a person who provides a taxable service exclusively in a place to which admission is granted to persons for the purpose of the presentation to those persons of a programming service by means of telecommunication on payment of a charge or fee through the sale of a ticket or any similar means of admission, or
- (b) a person who, in any month, provides a taxable service to not more than two hundred persons, but does not include a person who, in any month in the year preceding that month, has provided a taxable service to more than two hundred persons;

"taxable service",—"taxable service" means

- (a) the provision, by means of telecommunication, to the general public or any portion thereof, of any programming service,
- (b) the commencement or cessation of the provision of a programming service referred to in paragraph (a),
- (c) the provision of any instrument, device, equipment or apparatus or any part thereof, other than a television receiver, that is
 - (i) used in conjunction with the reception of a programming service referred to in paragraph (a), and
 - (ii) provided by the person providing the programming service or by any person

authorized or designated by him for the purpose or acting on his behalf or by any person related to him,

if the person providing the programming service requires that the instrument, device, equipment, apparatus or part be acquired exclusively from him or any other person referred to in subparagraph (ii), and

(d) the installation, disconnection, replacement, repair or maintenance of any instrument, device, equipment or apparatus or any part thereof, other than a television receiver, referred to in paragraph (c), by the person providing the programming service in conjunction with which it is being used or by any other person referred to in subparagraph (c)(ii),

but does not include

- (e) any surveillance or monitoring service, telebanking or teleshopping service or opinion-polling service,
- (f) any background music service of a nature or kind that is provided in a shopping centre, an office building, a factory or a common area of a condominium or of an apartment building as an accompaniment to shopping, dining, working or other similar activities carried on in such place, or
- (g) any other service prescribed by regulations made pursuant to section 21.2,

that a person providing a programming service referred to in paragraph (a) provides for an additional fee or charge on the request of the person to whom the programming service is provided or that is provided by a person who does not provide a programming service referred to in paragraph (a).

(2) [Repealed.]

- (3) **Small undertaking resident in Canada.**—For the purposes of this Part, subsections 250(3) and (4) of the *Income Tax Act* apply in respect of the interpretation of the expression "small undertaking resident in Canada".
- (4) **Presumption.**—For the purposes of this Part, where a small undertaking within the meaning of paragraph (a) of the definition "small undertaking" in subsection (1) acquires a taxable service from a person, other than a licensee or a small undertaking resident in Canada, and provides the taxable service to other persons for amounts charged, the aggregate of the amounts charged is deemed
 - (a) to be equal to the amount charged by the person from whom the small undertaking acquired the service; and
 - (b) to have been paid at the end of the month in which the service was acquired from the person referred to in paragraph (a).
- (5) **Computation.** —For the purposes of paragraph (b) of the definition "small undertaking" in subsection (1), the number of persons to whom a person provides a taxable service in a month shall be computed as the aggregate of the number of
 - (a) persons, in this subsection referred to as "customers", to whom he, or a person related to him, provides the service in that month for an amount charged; and
 - (b) persons to whom customers provide the service in that month, whether or not for an amount charged, R.S.C. 1985, c. 15 (1st Supp.), s. 11; R.S.C. 1985, c. 12 (4th Supp.), s. 7.

Application to Crown

21.11 Binding on the Crown.—This Part binds Her Majesty in right of Canada or a province. R.S.C. 1985, c. 15 (1st Supp.), s. 11.

Imposition and Payment of Tax

- **21.12 Imposition of tax*.**—There shall be imposed, levied and collected a tax at the rate of eleven per cent on the amount charged for a taxable service, payable by the person providing the service at the time the amount charged is paid or payable, whichever is the earlier. R.S.C. 1985, c. 15 (1st Supp.), s. 11; R.S.C. 1985, c. 7 (2nd Supp.), s. 8; R.S.C. 1985, c. 42 (2nd Supp.), s. 2; R.S.C. 1985, c. 12 (4th Supp.), s. 8; S.C. 1989, c. 22, s. 8.
- **21.13** (1) **Relief from tax for licensee.**—No tax is payable under section 21.12 in respect of a taxable service provided to a licensee
 - (a) who,
 - (i) in the case of a service described in paragraph (a), (b), (c) or (d) of the definition "taxable service" in subsection 21.1(1), is acquiring the service for broadcasting without charge or for provision to another person for an amount charged or broadcasting without charge, or
 - (ii) in the case of a service described in paragraph (b), (c) or (d) of that definition, is acquiring the service for use in conjunction with a service referred to in subparagraph (i) that is acquired by the licensee for a use described in that subparagraph; and
 - (b) who, at the time the amount charged for the service is paid or payable, whichever is the earlier, so certifies, and gives his licence number, to the person providing the service.
- (2) Relief from tax for other persons.—No tax is payable under section 21.12 in respect of a taxable service provided to a person, other than a licensee,
 - (a) who,
 - (i) in the case of a service described in paragraph (a) of the definition "taxable service" in subsection 21.1(1), is acquiring the service for broadcasting without charge or for provision to another person for broadcasting without charge, or
 - (ii) in the case of a service described in paragraph (b), (c) or (d) of that definition, is acquiring the service for use in conjunction with a service referred to in subparagraph (i) that is acquired by the licenses for a use described in that subparagraph and
 - (i) that is acquired by the licensee for a use described in that subparagraph; and
 - (b) who, at the time the amount charged for the service is paid or payable, whichever is the earlier, so certifies to the person providing the service.
- (3) **Relief from tax for small undertaking.**—No tax is payable under section 21.12 in respect of a taxable service provided by a small undertaking, other than a taxable service that
 - (a) is provided by a small undertaking within the meaning of paragraph (a) of the definition "small undertaking" in subsection 21.1(1); and
 - (b) was acquired by the small undertaking from another person, other than a licensee or a small undertaking resident in Canada. R.S.C. 1985, c. 15 (1st Supp.), s. 11.

^{*}No tax applicable after 1990. See subsections 117(2), (3).

Determination of Amount Charged in Certain Circumstances

- 21.14 (1) Where service provided to non-arm's length person.—Where a licensee has provided a taxable service to a person with whom the licensee was not dealing at arm's length at the time of the provision for no amount charged or for an amount charged that was less than the amount charged (in this subsection referred to as the "reasonable charge") that would have been reasonable in the circumstances if the service had been provided to a person with whom the licensee was dealing at arm's length, for the purposes of this Part, the licensee shall be deemed to have provided the taxable service to that person for an amount charged equal to the reasonable charge for the service and, where there was no amount charged, the amount charged shall be deemed to be payable at the end of the month in which the service was provided.
- (2) Where service provided under certain circumstances.—Subject to subsection (1), where a licensee has provided a taxable service to a person and the amount charged for the service cannot be ascertained, for the purposes of this Part, the licensee shall be deemed to have provided the taxable service to that person for an amount charged equal to the amount that is reasonable in the circumstances. R.S.C. 1985, c. 15 (1st Supp.), s. 11; R.S.C. 1985, c. 12 (4th Supp.), s. 9.

Security

- **21.15** (1) **Security.**—A small undertaking that proposes to provide a taxable service in respect of which tax is or will be imposed by section 21.12 shall, if required by the Minister, provide security in accordance with subsection (2) for payment of the tax.
- (2) **Amount and form of security.**—The security to be provided by a small undertaking pursuant to subsection (1) shall
 - (a) be provided within the time fixed by the Minister, but not later than the day immediately preceding the day on which provision of the taxable service commences;
 - (b) be in an amount of not less than six per cent of
 - (i) the aggregate of the amounts charged for that taxable service by the person from whom the small undertaking acquired the service, or
 - (ii) where the aggregate of the amounts charged for that taxable service by the person from whom the small undertaking acquired the service cannot be determined prior to the commencement of the service by the small undertaking, the aggregate of the amounts that, in accordance with the agreement between the small undertaking and that other person, are paid or payable by the small undertaking for the service, computed as of seven days prior to the commencement of the service or such later day as may be fixed by the Minister; and
 - (c) be provided by a chartered bank or by depositing with the Minister
 - (i) a bond, acceptable to the Minister, of an incorporated guarantee company authorized to do business in Canada, or
 - (ii) a bond or other security of or guaranteed by the Government of Canada.
- (3) Cancellation of bond.—Notwithstanding that a bond of a guarantee company given under this section has been cancelled, the bond shall be deemed to remain in force in relation to taxable services provided or to be provided for an amount charged at the time of cancellation until all liabilities to pay amounts on account of tax, penalties, interest or other amounts in relation to such taxable services are discharged. R.S.C. 1985, c. 15 (1st Supp.), s. 11.

Diversions

- **21.16** (1) **Diversions.**—Where, pursuant to subsection 21.13(1) or (2), a taxable service is relieved from tax by reason of the use for which the service is acquired, in this section referred to as the "relieved use", and that service is subsequently diverted
 - (a) by the person who acquired the service for the relieved use, or
 - (b) where the person referred to in paragraph (a) acquired the service for provision to another person for broadcasting without charge, by that other person,

to any other use or purpose in respect of which the service would not, at the time of the acquisition of the service for the relieved use, be so relieved, the person who diverted the service and the person who provided the service to him are, from the time of the diversion, jointly and severally liable to pay tax under this Part in respect of the amount charged for the service.

(2) Tax payable.—The tax payable pursuant to subsection (1) is payable at the time the service is diverted and shall be computed as the amount of tax that would have been payable at the time of the acquisition of the service for the relieved use had the service not been so relieved. R.S.C. 1985, c. 15 (1st Supp.), s. 11.

Licences

- 21.17 (1) Application for licence.—Subject to this section, every person who is providing a taxable service for an amount charged on the coming into force of this Part shall make an application in the prescribed form to the Minister for a licence for the purposes of this Part not later than the last day of the first month immediately following the month in which this Part comes into force.
- (2) **Idem.**—Subject to this section, every person who commences to provide, on or after the coming into force of this Part, a taxable service for an amount charged shall make an application in the prescribed form to the Minister for a licence for the purposes of this Part not later than the last day of the first month immediately following the month in which that person commences to provide the service.
 - (3) **Exemption.**—Subsections (1) and (2) do not apply to a small undertaking.
- (4) **Exemption lifted.**—Every person providing a taxable service for an amount charged who ceases to be a small undertaking shall make an application in the prescribed form to the Minister for a licence for the purposes of this Part not later than the last day of the first month immediately following the month in which that person ceases to be a small undertaking. R.S.C. 1985, c. 15 (1st Supp.), s. 11; R.S.C. 1985, c. 7 (2nd Supp.), s. 9.
- **21.18** Issue of licence.—The Minister may issue a licence for the purposes of this Part to any person applying therefor under section 21.17. R.S.C. 1985, c. 15 (1st Supp.), s. 11.
- **21.19** Cancellation.—The Minister may cancel a licence issued under section 21.18 if, in the Minister's opinion, it is no longer required for the purposes of this Part. R.S.C. 1985, c. 15 (1st Supp.), s. 11.

Regulations

21.2 Regulations.—The Governor in Council may make regulations

(a) prescribing, for the purposes of paragraph (g) of the definition "taxable service" in subsection 21.1(1), any service other than a programming service referred to in paragraph (a) of that definition;

- (b) respecting the method for determining the reasonable amount charged for a taxable service for the purposes of section 21.14; and
- (c) generally for carrying out the purposes and provisions of this Part. R.S.C. 1985, c. 15 (1st Supp.), s. 11; R.S.C. 1985, c. 12 (4th Supp.), s. 10.

Increase of Amount Charged by Licensee

21.21 Override of other laws.—A licensee may,

- (a) notwithstanding the *Broadcasting Act* or any other Act of Parliament or any regulation or other statutory instrument made thereunder or any other law, and
- (b) notwithstanding
 - (i) any decision or order made, or any licence or renewal of a licence issued, by the Canadian Radio-television and Telecommunications Commission, or
 - (ii) any other act or thing given, done or issued pursuant to the *Broadcasting Act* or any other Act of Parliament or any other law,

before or after the coming into force of this Part,

increase the amount charged for a taxable service by an amount not exceeding the tax payable by him under this Part with respect to that service. R.S.C. 1985, c. 15 (1st Supp.), s. 11.

PART II.2

TELECOMMUNICATION SERVICES TAX

Interpretation

21.22 (1) **Definitions.**—In this Part.

- "amount charged".—"amount charged", in respect of a service, means any amount paid or payable by a person for the service, before any amount paid or payable in respect of any tax under this Part or imposed under an Act of the legislature of a province respecting retail sales tax is added thereto;
- "approved tariff".—"approved tariff", in respect of a licensee, means a current schedule or tariff that sets out or otherwise provides for amounts that may be charged by the licensee for any service and that is approved by
 - (a) the Canadian Radio-television and Telecommunications Commission,
 - (b) the lieutenant governor in council of a province,
 - (c) a commission, board, tribunal, authority or other body established by or pursuant to an Act of the legislature of a province to regulate telecommunications,
 - (d) a person designated by the lieutenant governor in council of a province to regulate telecommunications, or
 - (e) a municipal or local commission, board, tribunal, authority or other body that regulates telecommunications in a municipality;
- "licensee".—"licensee" means any person to whom a licence has been issued under subsection 21.3(2) and includes any person who is required by subsection 21.3(1) to apply for a licence:
- "separate charge".—"separate charge", in respect of a service provided by a person, means an amount charged for the service

- (a) as set out separately in a contract entered into by that person and the person charged for the service or in an invoice, bill, statement of account or other similar document issued or made available by that person to the person charged for the service, or
- (b) if no such contract was so entered into and document was so issued or made available and the person providing the service is a licensee, as set out or provided for separately in an approved tariff of the licensee;

"taxable service".—"taxable service" means

- (a) any telecommunication service,
- (b) the commencement or cessation of a telecommunication service,
- (c) the provision of any instrument, device, equipment or apparatus or any part thereof, other than terminal equipment for the provision of which a separate charge is made, that is
 - (i) used in conjunction with a telecommunication service, and
 - (ii) provided by the person providing the telecommunication service or by any person authorized or designated by him for the purpose or acting on his behalf or by any person related to him,
- if the person providing the telecommunication service requires that the instrument, device, equipment, apparatus or part be acquired exclusively from him or any other person referred to in subparagraph (ii), and
- (d) the installation, disconnection, replacement, repair or maintenance of any instrument, device, equipment or apparatus or any part thereof referred to in paragraph (c) by the person providing the telecommunication service in conjunction with which it is being used or by any other person referred to in subparagraph (c)(ii),

but does not include a taxable service within the meaning assigned by subsection 21.1(1);

- "telecommunication service".—"telecommunication service" means the transmission of any information by means of a system for telecommunication or any part thereof and includes the making available of such a system or part for that use, whether or not it is so used, but does not include
 - (a) any such service provided for taxi, messenger or other dispatch purposes, if the person providing the service uses, primarily for the person's own dispatch purposes, the system or part thereof by means of which the service is provided,
 - (b) any such service provided to an occupant in a building or building complex by the owner or manager of the building or complex, if
 - (i) the system or part thereof by means of which the service is provided and that is controlled by the owner or manager is used exclusively to provide such service within the building or complex, and
 - (ii) the owner or manager provides the service exclusively
 - (A) by means of the system or part referred to in subparagraph (i),
 - (B) through the resale of service acquired from another person, or
 - (C) in the manner described in clauses (A) and (B), or
 - (c) the provision, in conjunction with any such service, of a data processing, data storage, information or other service (in this paragraph referred to as the "additional service") by means of telecommunication for a separate charge, if

- (i) the service in conjunction with which the additional service is provided is offered separately from the additional service, and
- (ii) the additional service is, or could be, lawfully provided by means of telecommunication by persons other than telecommunications carriers;

"telecommunications carrier".—"telecommunications carrier" means

- (a) any person who, for an amount charged, provides telecommunication service to the general public, or any portion thereof, by means of a telecommunication system owned, or controlled, and operated by that person, and
- (b) any person to whom a licence has been issued under section 21.18 or who is required by section 21.17 to apply for a licence for the purposes of Part II.1.
- (2) **Presumption.**—For the purposes of the definitions "telecommunication service" and "telecommunications carrier" in subsection (1), a person who provides telecommunication service through the resale of telecommunication service acquired from another person shall be deemed not to control the system for telecommunication of that other person. R.S.C. 1985, c. 12 (4th Supp.), s. 11.

Application to Crown

21.23 Binding on Her Majesty.—This Part binds Her Majesty in right of Canada or a province. R.S.C. 1985, c. 12 (4th Supp.), s. 11.

Imposition of Tax

- **21.24** (1) **Imposition of tax*.**—There shall be imposed, levied and collected a tax at the rate of eleven per cent on the amount charged for a taxable service acquired from a licensee, payable by the person charged for the service at the time the amount charged is paid or payable, whichever is the earlier.
- (2) Tax on long distance calls from a pay telephone.—Notwithstanding subsection (1), where long distance telephone service is acquired and paid for by means of a coin-operated telephone and the amount charged for the service exceeds fifty cents, the tax payable in respect of the service shall be calculated at the rate of five cents for every fifty cents or part thereof charged for the service in excess of twenty-four cents.
- (3) **Tax on paging service.**—Notwithstanding subsection (1), where a paging service is acquired, the tax payable in respect of the service shall be calculated at the rate of thirty cents, in respect of each paging terminal device by means of which the service is acquired, for each month or fraction of a month in which the service is acquired.
- (4) Tax on private international service.—Notwithstanding subsection (1), where telecommunication service between a place in Canada and a place outside Canada is provided by means of a telecommunication line, channel or other facility that is dedicated to the sole use of a person, the tax payable in respect of the service shall be calculated on the amount charged for the service only to the extent that the amount charged is for service provided in Canada. R.S.C. 1985, c. 12 (4th Supp.), s. 11; S.C. 1989, c. 22, s. 1.

^{*}No tax applicable after 1990. See subsections 117(2), (3).

Determination of Amount Charged in Certain Circumstances

- 21.25 (1) Where service acquired by licensee.—Where a licensee has provided a taxable service to itself for use in the administration or management of its business, for the purposes of this Part, the licensee shall be deemed to have acquired the taxable service from itself for an amount charged equal to fifty per cent of the amount charged that would have been reasonable in the circumstances if the service had been provided to a person with whom the licensee was dealing at arm's length and the amount charged shall be deemed to be payable at the end of the month in which the service was provided.
- (2) Where service acquired by non-arm's length person.—Where a licensee has provided a taxable service to a person with whom the licensee was not dealing at arm's length at the time of the provision for no amount charged or for an amount charged that was less than the amount charged (in this subsection referred to as the "reasonable charge") that would have been reasonable in the circumstances if the service had been provided to a person with whom the licensee was dealing at arm's length, for the purposes of this Part, that person shall be deemed to have acquired the taxable service from the licensee for an amount charged equal to the reasonable charge for the service and, where there was no amount charged, the amount charged shall be deemed to be payable at the end of the month in which the service was provided.
- (3) Where service acquired under certain circumstances.—Subject to subsection (2), where a licensee has provided a taxable service to a person and the amount charged for the service cannot be ascertained, for the purposes of this Part, that person shall be deemed to have acquired the taxable service from the licensee for an amount charged equal to the amount that is reasonable in the circumstances.
- (4) **Reasonable charge where approved tariff.**—Where the amount that may be charged for a taxable service provided by a licensee was set out or provided for separately in an approved tariff of the licensee at the time of the provision, the amount as so set out or provided for shall be deemed to be
 - (a) for the purposes of subsections (1) and (2), the amount charged that would have been reasonable in the circumstances; and
 - (b) for the purposes of subsection (3), the amount that is reasonable in the circumstances. R.S.C. 1985, c. 12 (4th Supp.), s. 11.

Relief from Tax

- **21.26** (1) **Relief from tax for residential telephone service.**—No tax is payable under section 21.24 on any amount charged for
 - (a) the provision, commencement or cessation of residential telephone service, other than the provision of long distance telephone service; or
 - (b) the provision, installation, disconnection, replacement, repair or maintenance of any instrument, device, equipment or apparatus or any part thereof that is used in conjunction with residential telephone service.
- (2) Relief from tax for pay telephone service.—No tax is payable under section 21.24 on any amount charged for telephone service acquired and paid for by means of a coin-operated telephone, other than long distance telephone service for which the amount charged exceeds fifty cents.
 - (3) Relief from tax for international telecommunication service.—No tax is payable

under section 21.24 on any amount charged for any taxable service that is provided entirely outside Canada. R.S.C. 1985, c. 12 (4th Supp.), s. 11.

- **21.27** (1) **Relief from tax for diplomats.**—No tax is payable under section 21.24 on any amount charged for a taxable service acquired by a person described in section 2 of Part II of Schedule III or by a member of the family of that person, if that member is not a Canadian citizen or a permanent resident of Canada.
- (2) **Relief from tax for international organizations.**—No tax is payable under section 21.24 on any amount charged for a taxable service acquired by an organization in respect of which the Governor in Council has provided, by order made pursuant to subsection 4(1) of the *Privileges and Immunities (International Organizations) Act*, that the organization shall have the privileges and immunities set out in paragraph 7(a) of Schedule I to that Act.
- (3) **Relief from tax for foreign military forces.**—No tax is payable under section 21.24 on any amount charged for a taxable service acquired by a government of a country designated by the Governor in Council pursuant to heading No. 98.10 of Schedule I to the *Customs Tariff*, or acquired by a Canadian government agency on behalf of such a government, if the amount charged relates to telecommunication originating or terminating at a military or defence establishment in Canada.
- (4) **Relief from tax for certain provinces.**—No tax is payable under section 21.24 on any amount charged for a taxable service acquired by Her Majesty in right of a province, other than a province in respect of which there is in force at the time that the service is acquired a reciprocal taxation agreement referred to in section 32 of the *Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act, 1977.*
- (5) **Relief from tax for Indians.**—No tax is payable under section 21.24 on any amount charged for a taxable service acquired by an Indian or band within the meaning of subsection 2(1) of the *Indian Act*, if the amount charged is billed to the Indian or band at a reserve within the meaning of that subsection and relates to telecommunication originating or terminating at a reserve. R.S.C. 1985, c. 12 (4th Supp.), s. 11.
- **21.28** (1) **Relief from tax for licence holders under this Part.**—No tax is payable under section 21.24 on any amount charged for a taxable service acquired by a person to whom a licence has been issued under subsection 21.3(2) for provision to another person or for use directly in providing another taxable service, other than a paging service, to another person.
- (2) Relief from tax for licence holders under Part II.1.—No tax is payable under section 21.24 on any amount charged for a taxable service acquired by a person to whom a licence has been issued under section 21.18 for use in providing, by means of telecommunication, a programming service within the meaning of subsection 21.1(1) to another person for an amount charged within the meaning of that subsection or in producing a programming service for such provision.
- (3) Relief from tax for foreign telecommunications carriers.—Subject to subsection (4), no tax is payable under section 21.24 on any amount charged for a taxable service acquired, by a telecommunications carrier who provides telecommunication service solely outside Canada, for provision to another person outside Canada or for use directly in providing another taxable service to another person outside Canada.
- (4) **Exception.**—Subsection (3) does not apply in respect of any telecommunication service between a place in Canada and a place outside Canada that is provided by means of a telecommunication line, channel or other facility that is dedicated to the sole use of a person. R.S.C. 1985, c. 12 (4th Supp.), s. 11.

Diversions

- **21.29** (1) **Diversions.**—Where, pursuant to subsection 21.28(1) or (2), no tax is payable in respect of a taxable service by reason of the use for which the service is acquired (in this section referred to as the "relieved use") and that service is subsequently diverted by the person acquiring it to any other use for which the service would not, at the time of the acquisition, have been so relieved, that person is liable to pay tax under this Part in respect of the amount charged that person for the service.
- (2) **Tax payable.**—The tax payable pursuant to subsection (1) is payable at the time the taxable service is diverted and shall be computed as the amount of tax that would have been payable at the time of the acquisition of the service for the relieved use had the service not been acquired for that use.
- (3) **Presumption.**—For the purposes of sections 21.32 and 21.33, the tax payable pursuant to subsection (1) shall be deemed to be a tax imposed by this Part that was collected or collectible by the person at the time of the diversion. R.S.C. 1985, c. 12 (4th Supp.), s. 11.

Licences

- **21.3** (1) **Application for licence.**—Every telecommunications carrier who provides taxable services in Canada for an amount charged shall make an application in the prescribed form to the Minister for a licence for the purposes of this Part not later than the last day of the first month immediately following the first month, after December 31, 1987, in which that person so provides a taxable service.
- (2) **Issue of licence.**—The Minister may issue a licence for the purposes of this Part to any person applying therefor under subsection (1).
- (3) Cancellation.—The Minister may cancel a licence issued under subsection (2) if, in the Minister's opinion, it is no longer required for the purposes of this Part. R.S.C. 1985, c. 12 (4th Supp.), s. 11.

Collection of Tax

- 21.31 (1) Duty of licensee.—Every licensee is an agent of the Minister for the purpose of collecting taxes under this Part and as such shall
 - (a) levy and collect any taxes imposed by this Part on the amount charged for a taxable service acquired from the licensee;
 - (b) make adjustments in or refund any portion of the tax paid on the amount charged for a taxable service that has not been provided or has been only partially provided by the licensee; and
 - (c) make adjustments in or refund any portion of any tax that has been collected in error by the licensee.
- (2) Election by licence holder to pay tax directly.—Notwithstanding subsection (1), where a person, other than a person who provides a paging service and no other taxable service, to whom a licence has been issued under subsection 21.3(2) acquires a taxable service from another licensee and the acquisition is not relieved from tax pursuant to subsection 21.28(1) or (2), that person may, in lieu of paying to that other licensee any tax payable on the amount charged for the taxable service, elect to pay the tax directly to the Receiver General.
- (3) **Presumption.**—For the purposes of sections 21.32 and 21.33, where a person makes an election pursuant to subsection (2), the tax shall be deemed to be a tax imposed by this Part

that was collected or collectible by that person at the time the tax became payable by that person.

(4) **Debt due to Her Majesty.**—Every person who, being required by or pursuant to this Part to collect tax, fails to do so as required is liable to Her Majesty in right of Canada for the amount of tax. R.S.C. 1985, c. 12 (4th Supp.), s. 11.

Returns and Remittance of Tax

- **21.32** (1) **Monthly return of taxes.**—Every licensee shall make each month a true return, in the prescribed form and containing the prescribed information, of all amounts collected or collectible by the licensee by way of the tax imposed by this Part in the last preceding month.
- (2) **Nil return.**—Every licensee shall, if no amounts were collected or collectible by the licensee by way of the tax imposed by this Part in the last preceding month, make a return as required by subsection (1) stating that fact.
- (3) Alternate periods for making returns.—Notwithstanding subsections (1) and (2), the Minister may, by regulation,
 - (a) authorize any licensee to make a return in respect of any accounting period of not less than twenty-one days and not more than thirty-five days;
 - (b) authorize any licensee to make a return in respect of any period longer than one month but not longer than six months, if the amounts collected or collectible by the licensee by way of the tax imposed by this Part in the last preceding calendar year did not exceed four thousand eight hundred dollars; or
 - (c) authorize any licensee whose taxable services are predominantly limited to a seasonal period of operation to make a return in respect of any period longer than one month but not longer than six months, if the amounts collected or collectible by the licensee by way of the tax imposed by this Part in the equivalent period in the last preceding calendar year did not exceed an average of four hundred dollars per month throughout that equivalent period.
- (4) **Date for filing and remittance.**—Subject to subsection (8) and sections 21.33 and 79.2, the return required by this section shall be filed and the taxes on amounts charged for taxable services that are collected or collectible by a licensee shall be remitted
 - (a) in a case where the return is required to be made in accordance with subsection (1) or (2), not later than the last day of the first month succeeding that in which the amounts charged for the taxable service were paid or became payable to the licensee;
 - (b) in a case where the return is authorized to be made in accordance with a regulation made under paragraph (3)(a), not later than the last day of the first authorized accounting period following the end of the accounting period to which the return relates; and
 - (c) in a case where the return is authorized to be made in accordance with a regulation made under paragraph (3)(b) or (c), not later than the last day of the first month following the end of the period to which the return relates.
- (5) **Penalty and interest on default in remitting taxes.**—Subject to subsections (6) to (9), a licensee who defaults in remitting tax within the time prescribed by subsection (4), in addition to the amount in default, shall pay
 - (a) in the case of tax required to be remitted not later than the last day of a month, a penalty of one-half of one per cent and interest at the prescribed rate, in respect of each month or

fraction of a month between that day and the day on which the total tax, penalty and interest outstanding is remitted, calculated on the total tax, penalty and interest outstanding in that month or fraction of a month; and

- (b) in the case of tax required to be remitted not later than the last day of an accounting period, a penalty of one-half of one per cent and interest at the prescribed rate, in respect of each accounting period or fraction of an accounting period between that day and the day on which the total tax, penalty and interest outstanding is remitted, calculated on the total tax, penalty and interest outstanding in that accounting period or fraction of an accounting period.
- (6) **Minimum penalty and interest.**—No penalty or interest is payable under subsection (5) if the licensee remits all taxes collected or collectible by the licensee under this Part and, at the time of the remittance, the total penalty and interest payable is less than ten dollars.
- (7) **Time for paying penalty or interest.**—A licensee who is liable to pay penalty or interest under subsection (5) shall pay the penalty or interest not later than the last day of the month or accounting period in respect of which the penalty or interest was calculated.
- (8) **Extension.**—The Minister may, before or after the expiration of the time prescribed by subsection (4), extend in writing the time for filing a return or remitting any tax, and where the Minister so extends the time.
 - (a) the return shall be filed or the tax shall be remitted within the time as so extended;
 - (b) interest accrues under subsection (5) in respect of the tax as if the time had not been so extended:
 - (c) no penalty accrues or shall be deemed to have accrued under subsection (5) in respect of the tax before the expiration of the time as so extended; and
 - (d) penalty accrues under subsection (5) in respect of a default in remitting the tax or any portion thereof within the time as so extended as if the default were a default referred to in that subsection.
- (9) Security.—Where the Minister holds security under section 80.1 for the remittance of any tax under this Part that is not remitted within the time prescribed by subsection (4),
 - (a) interest accrues under subsection (5) in respect of the tax from the expiry of that time; and
 - (b) penalty accrues under subsection (5) only if the total tax, penalty and interest outstanding, as calculated in respect of each month or accounting period or fraction of a month or accounting period during which the default continues, exceeds the value of the security at the time it is accepted by the Minister and, if accruing, the penalty shall be calculated only on the amount of the excess. R.S.C. 1985, c. 12 (4th Supp.), s. 11.
 - 21.33 (1) Interpretation.—For the purposes of this section,
 - (a) a licensee's "instalment base"
 - (i) for a month is the lesser of
 - (A) the tax imposed by this Part that was collected or collectible by that licensee in that month, and
 - (B) the tax so collected or collectible in the last preceding month,
 - (ii) for an accounting period is the lesser of
 - (A) the tax imposed by this Part that was collected or collectible by that licensee in that accounting period, and

- (B) the tax so collected or collectible in the last preceding accounting period, and
- (iii) for any other period to which a return relates is the lesser of
 - (A) the tax imposed by this Part that was collected or collectible by that licensee in that period, and
 - (B) the tax so collected or collectible in the last preceding period multiplied by the ratio that the number of days in the period to which the return relates is to the number of days in the last preceding period; and
- (b) a licensee is a "large taxpayer" at any particular time if
 - (i) the aggregate amount of taxes payable under Parts II.1, III, IV and VI, other than taxes payable in accordance with the *Customs Act*, and collected or collectible under Part II and this Part by that licensee in the last preceding calendar year ending at least ninety days, or ninety-one days where that time falls in a leap year, before that time exceeded twelve million dollars, or

(ii) the licensee

- (A) was, at any time in the last preceding calendar year ending at least ninety days, or ninety-one days where that time falls in a leap year, before that time, a member of a group of associated corporations (within the meaning of section 256 of the *Income Tax Act*) and the aggregate amount of taxes payable under Parts II.1, III, IV and VI, other than taxes payable in accordance with the *Customs Act*, and collected or collectible under Part II and this Part by the group in that year exceeded twelve million dollars, and
- (B) is not, at that time, authorized to make a return in accordance with a regulation made under paragraph 21.32(3)(b) or (c).
- (2) **Instalment payments by large taxpayers.**—A large taxpayer who is required to file a return and remit tax within the time prescribed by subsection 21.32(4) shall pay instalments on account of the tax in accordance with the following rules:
 - (a) in the case where the return is required to be made in accordance with subsection 21.32(1), the large taxpayer shall pay two instalments, each equal to one-half of the taxpayer's instalment base for the month in which the tax was collected or became collectible, the first to be paid not later than the last day of that month and the second not later than the fifteenth day of the next following month; and
 - (b) in the case where the return is authorized to be made in accordance with a regulation made under paragraph 21.32(3)(a), the large taxpayer shall pay two instalments, each equal to one-half of the taxpayer's instalment base for the accounting period to which the return relates, the first to be paid not later than the last day of that accounting period and the second not later than the fifteenth day of the next following accounting period.
- (3) **Instalment payments by other licensees.**—A licensee, other than a large taxpayer, who is required to file a return and remit tax within the time prescribed by subsection 21.32(4) shall pay an instalment on account of the tax in accordance with the following rules:
 - (a) in the case where the return is required to be made in accordance with subsection 21.32(1), the licensee shall pay an instalment, equal to the licensee's instalment base for the month in which the tax was collected or became collectible, not later than the twenty-first day of the next following month;
 - (b) in the case where the return is authorized to be made in accordance with a regulation made under paragraph 21.32(3)(a), the licensee shall pay an instalment, equal to the

licensee's instalment base for the accounting period to which the return relates, not later than the twenty-first day of the next following accounting period; and

- (c) in the case where the return is authorized to be made in accordance with a regulation made under paragraph 21.32(3)(b) or (c), the licensee shall pay an instalment, equal to the licensee's instalment base for the period to which the return relates, not later than the twenty-first day of the month next following the end of that period.
- (4) **Penalty and interest on default by large taxpayer in paying instalment.**—Subject to subsections (6) to (8), a large taxpayer who defaults in paying an instalment within the time prescribed by subsection (2) shall, in addition to the amount in default, pay in respect of the period between the end of that time and the end of the time prescribed for remittance of the tax on account of which the instalment was payable
 - (a) in the case of an instalment required to be paid not later than the last day of a month or an accounting period, a penalty of one-half of one per cent and interest at the prescribed rate, calculated on the amount by which
 - (i) one-half of the taxpayer's instalment base for that month or accounting period exceeds
 - (ii) the aggregate of all taxes on account of which the instalment was payable that were remitted not later than that day; and
 - (b) in the case of an instalment required to be paid not later than the fifteenth day of a month or an accounting period, a penalty of one-quarter of one per cent and interest at one-half of the prescribed rate, calculated on the amount by which
 - (i) one-half of the taxpayer's instalment base for the last preceding month or accounting period

- (ii) the amount by which the aggregate of all taxes on account of which the instalment was payable that were remitted not later than that day exceeds the lesser of
 - (A) the aggregate of all taxes on account of which the instalment was payable that were remitted not later than the last day of the last preceding month or accounting period, and
 - (B) one-half of the taxpayer's instalment base for the last preceding month or accounting period.
- (5) **Penalty and interest on default by other licensees in paying instalment.**—Subject to subsections (6) to (8), a licensee who defaults in paying an instalment within the time prescribed by subsection (3) shall, in addition to the amount in default, pay in respect of the period between the end of that time and the end of the time prescribed for remittance of the tax on account of which the instalment was payable
 - (a) in the case of an instalment required by paragraph (3)(a) or (b) to be paid not later than the twenty-first day of a month or an accounting period, a penalty of one-sixth of one per cent and interest at one-third of the prescribed rate, calculated on the amount by which
 - (i) the licensee's instalment base for the last preceding month or accounting period exceeds
 - (ii) the aggregate of all taxes on account of which the instalment was payable that were remitted not later than that day; and
 - (b) in the case of an instalment required by paragraph (3)(c) to be paid not later than the

twenty-first day of a month next following the end of a period, a penalty of one-sixth of one per cent and interest at one-third of the prescribed rate, calculated on the amount by which

- (i) the licensee's instalment base for that period exceeds
 - (ii) the aggregate of all taxes on account of which the instalment was payable that were remitted not later than that day.
- (6) **Minimum penalty and interest.**—No penalty or interest is payable under subsection (4) or (5) if the large taxpayer or other licensee liable to pay the instalment remits all taxes collected or collectible by the taxpayer or other licensee under this Part and, at the time of the remittance, the total penalty and interest payable in respect of the instalment is less than five dollars and in respect of all such taxes is less than ten dollars.
- (7) **Time for paying penalty or interest.**—A large taxpayer or other licensee who is liable to pay penalty or interest under subsection (4) or (5) in respect of a default in paying an instalment shall pay the penalty or interest within the time prescribed by subsection 21.32(4) for the remittance of the tax on account of which the instalment is payable.
- (8) **Extension.**—The Minister may, before or after the expiration of the time prescribed by subsection (2) or (3), extend in writing the time for paying an instalment, for any period within the time prescribed by subsection 21.32(4) for the remittance of the tax on account of which the instalment is payable, and where the Minister so extends the time
 - (a) the instalment shall be paid within the time as so extended;
 - (b) interest accrues under subsection (4) or (5), as the case may be, in respect of the instalment as if the time had not been so extended;
 - (c) no penalty accrues or shall be deemed to have accrued under subsection (4) or (5), as the case may be, in respect of the instalment before the expiration of the time as so extended; and
 - (d) penalty accrues under subsection (4) or (5), as the case may be, in respect of a default in paying an instalment within the time as so extended as if the default were a default referred to in that subsection. R.S.C. 1985, c. 12 (4th Supp.), s. 11.

Regulations

21.34 Regulations.—The Governor in Council may make regulations

- (a) respecting the method for determining the reasonable amount charged for a taxable service for the purposes of section 21.25; and
- (b) generally for carrying out the purposes and provisions of this Part. R.S.C. 1985, c. 12 (4th Supp.), s. 11.

PART III

EXCISE TAXES ON COSMETICS, JEWELLERY, RADIOS, ETC.

22. (1) Definitions.—In this Part,

"duty paid value".—"duty paid value" means the value of the article as it would be determined for the purpose of calculating an ad valorem duty on the importation of that article into Canada under the laws relating to the customs and the Customs Tariff whether

that article is in fact subject to *ad valorem* or other duty or not, plus the amount of the customs duties, if any, payable thereon;

- "licensed wholesaler".—"licensed wholesaler" has the meaning assigned to that expression by section 42;
- "sale price".—"sale price", for the purpose of determining the excise tax payable under this Part, means the aggregate of
 - (a) the amount charged as price before any amount payable in respect of any other tax under this Act is added thereto,
 - (b) any amount that the purchaser is liable to pay to the vendor by reason of or in respect of the sale in addition to the amount charged as price, whether payable at the same or any other time, including, without limiting the generality of the foregoing, any amount charged for, or to make provision for, advertising, financing, servicing, warranty, commission or any other matter, and
 - (c) the amount of excise duties payable under the Excise Act whether the goods are sold in bond or not.
- (2) Calculation of sale price and duty paid value.—For the purpose of determining the excise tax payable under this Part
 - (a) in calculating the sale price of goods manufactured or produced in Canada, there shall be included the amount charged as price for or in respect of the wrapper, package, box, bottle or other container in which the goods are contained; and
 - (b) in calculating the duty paid value of imported goods that, when imported, are wrapped, packaged, put up in boxes or bottles or otherwise prepared for sale, there shall be added to the value of the goods as determined in the manner prescribed in this Part the value, similarly determined, of the wrapper, package, box, bottle or other container in which the goods are contained.
- 23. (1) Tax on various articles at schedule rates.—Subject to subsections (6) to (8.3) and 23.2(6), whenever goods mentioned in Schedules I and II are imported into Canada or manufactured or produced in Canada and delivered to a purchaser thereof, there shall be imposed, levied and collected, in addition to any other duty or tax that may be payable under this or any other Act or law, an excise tax in respect of those goods at the applicable rate set out in the applicable section in whichever of those Schedules is applicable, computed, where that rate is specified as a percentage, on the duty paid value or the sale price, as the case may be.
- (2) **By whom and when tax is payable.**—Where goods are imported, the excise tax imposed by subsection (1) shall be paid in accordance with the provisions of the *Customs Act* by the importer, owner or other person liable to pay duties under that Act, and where goods are manufactured or produced and sold in Canada, the excise tax shall be payable by the manufacturer or producer at the time of delivery of the goods to the purchaser thereof.
 - (3) **Deemed sale and delivery to purchaser.**—For the purposes of subsection (2),
 - (a) where gasoline or diesel fuel is delivered to a retail outlet by or on behalf of the manufacturer or producer thereof, the gasoline or diesel fuel shall be deemed to have been sold and delivered to a purchaser thereof; and
 - (b) where gasoline, diesel fuel or aviation fuel was, immediately prior to March 1, 1987, held in inventory by or on behalf of a person described in paragraph (e) of the definition "manufacturer or producer" in subsection 2(1) as that subsection read immediately prior to March 1, 1987, who was a licensed manufacturer under this Act of gasoline, diesel fuel

or aviation fuel solely by virtue of that paragraph, and the excise tax thereon had not been paid or become payable on or before February 28, 1987, the gasoline, diesel fuel or aviation fuel shall be deemed to have been sold and delivered to a purchaser thereof immediately prior to March 1, 1987.

- (3.1) **Deemed sale.**—For the purposes of this Part, a person who, pursuant to a contract for labour, manufactures or produces goods mentioned in Schedule I or II from any article or material supplied by another person, other than a manufacturer licensed for the purposes of this Part, for delivery to that other person shall be deemed to have sold the goods, at a sale price equal to the charge made under the contract in respect of the goods, at the time they are delivered to that other person.
- (4) Tax on resale by licensed wholesaler of Schedule I goods.—Whenever goods mentioned in Schedule I are sold by a licensed wholesaler or are retained for the licensed wholesaler's own use or for rental by the licensed wholesaler to others, there shall be imposed, levied and collected, in addition to any other duty or tax payable under this Act or any other Act or law, an excise tax in respect of those goods at the applicable rate set out in the applicable section in that Schedule, computed, where that rate is specified as a percentage, on the duty paid value or the price at which the goods were purchased by the licensed wholesaler, as the case may be, payable by the licensed wholesaler at the time the goods are delivered to the purchaser or so retained for use or rental.
- (5) Tax on release by duty free shop of Schedule II tobacco products.—Subject to subsection 23.2(5) and section 66.1, whenever tobacco products mentioned in Schedule II are sold by the operator of a duty free shop or are retained for the use of the operator, there shall be imposed, levied and collected, in addition to any other duty or tax payable under this Act or any other Act or law, an excise tax in respect of those tobacco products at the applicable rate set out in the applicable section in that Schedule, computed, where that rate is specified as a percentage, on the duty paid value or the price at which the tobacco products were purchased by the operator, as the case may be, payable by the operator at the time the tobacco products are delivered to the purchaser or so retained for use.
- (6) When tax not payable.—The tax imposed by subsection (1) is not payable in the case of goods mentioned in Schedule I that are purchased or imported by a licensed wholesaler for resale by him.
- (7) When tax not payable.—The tax imposed by this section or by section 27 is not payable in the case of
 - (a) goods that are purchased or imported by a manufacturer licensed under section 130 of the *Excise Act* and that are to be incorporated into and form a constituent or component part of an article or product that is subject to excise duty under that Act;
 - (b) goods that are purchased or imported by a manufacturer licensed for the purposes of this Part and that are to be incorporated into and form a constituent or component part of an article or product that is subject to excise tax under this Act, if the tax on the article or product has not yet been levied pursuant to this section or section 27;
 - (c) [Repealed]
 - (d) [Repealed]
 - (e) new motor vehicles designed for highway use, or chassis therefor, imported by a person described in paragraph (g) of the definition "manufacturer or producer" in subsection 2(1) who is a manufacturer licensed for the purposes of this Part; or
 - (f) new motor vehicles designed for highway use, or chassis therefor, sold to a person

- described in paragraph (h) of the definition "manufacturer or producer" in subsection 2(1) who is a manufacturer licensed for the purposes of this Part.
- (8) **Idem.**—The tax imposed under subsection (1) or under section 27 is not payable in the case of
 - (a) goods that are purchased or imported by a licensed wholesaler who is deemed by subsection 55(2) to be a *bona fide* wholesaler or jobber for resale by him;
 - (b) goods for which relief from the consumption or sales tax is provided by virtue of section 12 or 13 of Part III of Schedule III or section 1 of Part VII of Schedule III;
 - (b.1) goods imported into Canada and classified under tariff item No. 9804.30.00 of Schedule I to the *Customs Tariff*; or
 - (c) diesel fuel for use in the generation of electricity, except where the electricity so generated is used primarily in the operation of a vehicle.
- (8.1) Where tax not payable.—The tax imposed under subsection (1) is not payable in the case of tobacco products mentioned in Schedule II that are
 - (a) sold by the manufacturer or producer of the tobacco products to an accredited representative for the personal or official use of the accredited representative,
 - (b) sold by the manufacturer or producer of the tobacco products to a person to whom a licence for a bonding warehouse has been granted under the *Excise Act* exclusively for the storage and subsequent sale of the products to an accredited representative for the personal or official use of the accredited representative,
 - (c) imported by an accredited representative for the personal or official use of the accredited representative,
 - (d) imported and entered into a bonded warehouse licensed as such under the *Customs Act* for sale by the importer or owner to an accredited representative for the personal or official use of the accredited representative,
 - (e) sold by the bonding warehouse licensee referred to in paragraph (b) or the importer or owner referred to in paragraph (d) to an accredited representative for the personal or official use of the accredited representative, or
 - (f) entered before February 13, 1992 into a bonded warehouse licensed as such under the *Customs Act* and sold to an accredited representative for the personal or official use of the accredited representative.
- (8.2) Other cases where tax not payable.—The tax imposed under subsection (1) on tobacco products mentioned in Schedule II is not payable if evidence satisfactory to the Minister is produced to establish that
 - (a) the products have been exported in bond by the manufacturer or producer of the products;
 - (b) the products have been sold by the manufacturer or producer of the products and entered into a bonded warehouse, licensed as such under the *Customs Act*, for delivery as ships' stores in accordance with the regulations made under this Act and the *Customs Act*; or
 - (c) the products have been sold by the manufacturer or producer of the products to a person for use as ships' stores, where the purchase by that person for that purpose was in accordance with the regulations made under this Act and the *Customs Act*.

- (8.3) **Idem.**—The tax imposed under subsection (1) on tobacco products mentioned in Schedule II is not payable in the case of imported tobacco products that are
 - (a) for use by the importer as ships' stores in accordance with the regulations made under this Act and the *Customs Act*; or
 - (b) entered into a bonded warehouse licensed as such under the *Customs Act*, for delivery as ships' stores in accordance with the regulations made under this Act and the *Customs Act* or for export.
- (9) **Diversion to taxable sale or use.**—Where gasoline or aviation gasoline has been purchased by a person to whom a bulk permit has been issued under regulations made by the Governor in Council pursuant to subsection 59(3) for a use by such person that renders the purchase exempt from a portion of the tax imposed by this section equal to one and one-half cents per litre and that person sells the gasoline or aviation gasoline or uses it for a purpose for which it could not have been purchased by him exempt from such portion of the tax at the time he purchased it, the portion of the tax that would have been payable at the time he purchased it equal to one and one-half cents per litre of gasoline or aviation gasoline shall be payable by that person at the time he so sells or uses the gasoline or aviation gasoline.
- (9.1) **Idem.**—Where fuel other than aviation gasoline has been purchased or imported for a use for which the tax imposed under this Part on diesel fuel or aviation fuel is not payable and the purchaser or importer sells or appropriates the fuel for a purpose for which the fuel could not have been purchased or imported without payment of the tax at the time he purchased or imported it, the tax imposed under this Part on diesel fuel or aviation fuel shall be payable by the person who sells or appropriates the fuel
 - (a) where the fuel is sold, at the time of delivery to the purchaser; and
 - (b) where the fuel is appropriated, at the time of that appropriation.
- (9.2) Diversion of tobacco products for non-exempt sale or use.—Subject to subsection (9.3), where
 - (a) tobacco products mentioned in Schedule II have been purchased or imported by a person and the tobacco products have been relieved, under this Act or otherwise, from the tax imposed under subsection (1) because of the purpose for which the person purchased or imported them,
 - (b) the tobacco products are sold or used for a purpose other than the purpose referred to in paragraph (a), and
 - (c) the tobacco products would not have been relieved from that tax if the person had purchased or imported them for the purpose of the sale or use referred to in paragraph (b),

the person is liable to pay the tax imposed under subsection (1) on the tobacco products, and that tax shall be deemed to have become payable by the person, in the case of a sale referred to in paragraph (b), at the time the person delivers the tobacco products to the purchaser, and in the case of a use referred to in paragraph (b), at the time that use began.

- (9.3) **Exception to application of s.** (9.2).—Subsection (9.2) does not apply in respect of a purchase or importation referred to in paragraph (9.2)(a) by the operator of a duty free shop.
- (10) **Appropriation by manufacturer or producer.**—Where goods of any class mentioned in Schedule I or II that were manufactured or produced in Canada are appropriated by the manufacturer or producer thereof for his own use, for the purposes of this Part,
 - (a) the goods shall be deemed to have been delivered to a purchaser thereof at the time of the appropriation; and

- (b) the sale price of the goods shall be deemed to be equal to the sale price that would have been reasonable in the circumstances if the goods had been sold at that time to a person with whom the manufacturer or producer was dealing at arm's length.
- (11) Person deemed manufacturer or producer.—Where a person has, in Canada,
- (a) put a clock or watch movement into a clock or watch case,
- (b) put a clock or watch movement into a clock or watch case and added a strap, bracelet, brooch or other accessory thereto, or
- (c) set or mounted one or more diamonds or other precious or semi-precious stones, real or imitation, in a ring, brooch or other article of jewellery,

he shall, for the purposes of this Part, be deemed to have manufactured or produced the watch, clock, ring, brooch or other article of jewellery in Canada. R.S.C. 1985, c. 15 (1st Supp.), s. 12; R.S.C. 1985, c. 1 (2nd Supp.), s. 187; R.S.C. 1985, c. 7 (2nd Supp.), s. 10; R.S.C. 1985, c. 12 (4th Supp.), s. 12; S.C. 1988, c. 65, s. 113; S.C. 1990, c. 45, s. 5; S.C. 1993, c. 25, s. 55.

- **23.1 Definition of "tobacco product".**—In sections 23.2 to 23.3, "tobacco product" means manufactured tobacco other than cut filler, cut rag or products manufactured less fully than cut filler or cut rag. S.C. 1993, c. 25, s. 56; S.C. 1994, c. 29, s. 5.
- 23.2 (1) Tax on exports.—Where tobacco products manufactured or produced in Canada are exported from Canada after February 8, 1994 by the manufacturer or producer, there shall be imposed, levied and collected in respect of the tobacco products, in addition to any other duty or tax payable under this Act or any other Act or law, an excise tax at the rate of
 - (a) 4 cents per cigarette, in the case of cigarettes;
 - (b) 2.667 cents per stick, in the case of tobacco sticks; and
 - (c) \$26.667 per kilogram, in the case of tobacco products other than cigarettes or tobacco sticks.
- (2) When and by whom tax is payable.—The tax imposed under subsection (1) is payable by the manufacturer or producer of the tobacco products at the time the tobacco products are exported from Canada. S.C. 1993, c. 25, s. 56; S.C. 1994, c. 29, s. 5.
- **23.21** (1) Categories of tobacco products.—In subsections (2) and (3), cigarettes, tobacco sticks, and manufactured tobacco other than cigarettes and tobacco sticks each constitute a category of tobacco product.
- (2) **Exemption for limited exports.**—The excise tax imposed under subsection 23.2(1) is not payable by a manufacturer or producer in respect of a particular quantity of a category of tobacco product exported at a time in a calendar year if the total quantity of that category of tobacco product, including the particular quantity, exported by the manufacturer or producer after February 8, 1994 and in the calendar year up to and including that time does not exceed 3 per cent of the total quantity of that category of tobacco product manufactured or produced by the manufacturer or producer in the preceding calendar year.
- (3) Quantities to be excluded for purpose of subsection (2).—The total quantities referred to in subsection (2) shall not include any quantity of tobacco product in respect of which the excise tax imposed under subsection 23.2(1) was repaid under section 68.161 or was not payable because of section 23.3. S.C. 1994, c. 29, s. 5.
- **23.3** (1) Exemption for prescribed tobacco product.—The excise tax imposed under subsection 23.2(1) is not payable in the case of a tobacco product of a particular brand that is manufactured or produced in Canada and exported from Canada, if

- (a) the tobacco product of that brand is prescribed in any regulations made by the Minister for the purposes of this subsection;
- (b) during the three year period before the year in which the tobacco product of that brand is exported, the tobacco product of that brand was not sold in Canada, other than in a duty free shop, except in quantities not significantly greater than the minimum quantities sufficient for the purposes of registering the trade mark for that brand; and
- (c) during any year before the three year period referred to in paragraph (b), sales in Canada of the product of that brand never exceeded 0.5 per cent of total sales in Canada of similar products or, where another percentage that is less than 0.5 per cent is prescribed in any regulations made by the Minister for the purposes of this subsection, that percentage of total sales in Canada of similar products.
- (2) Exemption for prescribed cigarettes.—The excise tax imposed under subsection 23.2(1) is not payable in the case of cigarettes of a particular type or formulation, manufactured or produced in Canada and exported from Canada under a brand that is also applied to cigarettes of a different type or formulation that are manufactured or produced in Canada and sold in Canada, if
 - (a) cigarettes of the particular type or formulation exported from Canada under that brand are prescribed in any regulations made by the Minister for the purposes of this subsection; and
 - (b) cigarettes of that particular type or formulation have never been sold in Canada by the manufacturer or producer under that brand or any other brand.
- (3) **Distinguishing different cigarettes.**—For the purposes of subsection (2), a cigarette of a particular type or formulation sold under a brand may be considered to be different from another cigarette sold under that brand if it is reasonable to consider them to be different having regard to their physical characteristics before and during consumption.
 - (4) **Regulations.**—The Minister may make regulations
 - (a) prescribing a tobacco product of a particular brand, for the purposes of subsection (1);
 - (b) prescribing percentages for the purposes of subsection (1); and
 - (c) prescribing eigarettes of a particular type or formulation exported from Canada under a particular brand, for the purposes of subsection (2). S.C. 1993, c. 25, s. 56.
- **23.31** (1) Tax on tobacco sold to purchaser not authorized to resell in Ont. or N.B.. An excise tax shall be imposed, levied and collected on manufactured tobacco that is
 - (a) marked or stamped in accordance with a statute of the Province of Ontario or New Brunswick to indicate that it is intended for retail sale in the province; and
 - (b) sold by the manufacturer of the manufactured tobacco, or by a person who is authorized under a statute of the province to sell manufactured tobacco in the province, to a purchaser who is not authorized under a statute of the province to sell manufactured tobacco in the province
- (2) Where tax not imposed.—Tax shall not be imposed under subsection (1) where the purchaser referred to in that subsection is a consumer located in the province referred to in that subsection and the purchase is for consumption by the purchaser or by others at the expense of the purchaser.
- (3) When and by whom tax is payable.—The tax imposed under subsection (1) is payable by the person selling the manufactured tobacco to the purchaser referred to in that subsection and is payable at the time of the sale.

- (4) Amount of tax.—The tax imposed on manufactured tobacco under subsection (1) shall be equal to the amount by which
 - (a) the excise tax that would have been imposed under section 23 in respect of the manufactured tobacco if the applicable rates of excise tax were the rates set out in paragraphs 1(f), 2(d) and 3(e) of Schedule II

exceeds

- (b) the excise tax that was imposed under section 23 in respect of the manufactured tobacco. S.C. 1994, c. 29, s. 6.
- 23.32 (1) Tax on tobacco sold to purchaser not authorized to resell in Quebec.—An excise tax shall be imposed, levied and collected on cigarettes and tobacco sticks that are
 - (a) marked or stamped in accordance with a statute of the Province of Quebec to indicate that they are intended for retail sale in the province; and
 - (b) sold by the manufacturer of them, or by a person who is authorized under a statute of the province to sell manufactured tobacco in the province, to a purchaser who is not authorized under a statute of the province to sell manufactured tobacco in the province.
- (2) Where tax not imposed.—Tax shall not be imposed under subsection (1) where the purchaser referred to in that subsection is a consumer in the Province of Quebec and the purchase is for consumption by the purchaser or by others at the expense of the purchaser.
- (3) When and by whom tax is payable.—The tax imposed under subsection (1) is payable by the person selling the cigarettes or tobacco sticks to the purchaser referred to in that subsection and is payable at the time of the sale.
- (4) **Amount of tax.**—The tax imposed on cigarettes and tobacco sticks under subsection (1) shall be equal to the amount by which
 - (a) the excise tax that would have been imposed under section 23 in respect of them if the applicable rates of excise tax were the rates set out in paragraphs 1(f) and 2(d) of Schedule II

- (b) the excise tax that was imposed under section 23 in respect of them. S.C. 1994, c. 29, s. 6.
- 23.33 (1) Tax on tobacco sold to purchaser not authorized to resell in Nova Scotia.—An excise tax shall be imposed, levied and collected on manufactured tobacco, other than tobacco sticks, that is
 - (a) marked or stamped in accordance with a statute of the Province of Nova Scotia to indicate that it is intended for retail sale in the province; and
 - (b) sold by the manufacturer of the manufactured tobacco, or by a person who is authorized under a statute of the province to sell manufactured tobacco in the province, to a purchaser who is not authorized under a statute of the province to sell manufactured tobacco in the province.
- (2) Where tax not imposed.—Tax shall not be imposed under subsection (1) where the purchaser referred to in that subsection is a consumer located in the Province of Nova Scotia and the purchase is for consumption by the purchaser or by others at the expense of the purchaser.
 - (3) When and by whom tax is payable.—The tax imposed under subsection (1) is

payable by the person selling the manufactured tobacco to the purchaser referred to in that subsection and is payable at the time of the sale.

- (4) **Amount of tax.**—The tax imposed on manufactured tobacco under subsection (1) shall be equal to the amount by which
 - (a) the excise tax that would have been imposed under section 23 in respect of the manufactured tobacco if the applicable rates of excise tax were the rates set out in paragraphs 1(f) and 3(e) of Schedule II

exceeds

- (b) the excise tax that was imposed under section 23 in respect of the manufactured tobacco. S.C. 1994, c. 29, s. 6.
- 23.34 (1) Definitions.—In this section,
- "licensed retail vendor".—"licensed retail vendor" means a retail vendor licensed as such under the *Health Tax Act*, R.S.P.E.I. 1988, c. H-3;
- "licensed wholesale vendor".—"licensed wholesale vendor" means a wholesale vendor licensed as such under the *Health Tax Act*, R.S.P.E.I. 1988, c. H-3.
- (2) Excise tax on diverted P.E.I. tobacco.—An excise tax shall be imposed, levied and collected on manufactured tobacco that is Atlantic manufactured tobacco or black stock, in respect of which paragraph 1(e) or 3(d) of Schedule II applies, that a licensed wholesale vendor sells to a person other than
 - (a) a licensed retail vendor; or
 - (b) a consumer in the Province of Prince Edward Island for consumption by the consumer or by others at the expense of the consumer.
- (3) When and by whom tax is payable. —The tax imposed under subsection (2) is payable by the licensed wholesale vendor at the time of the sale.
- (4) **Amount of tax.**—The tax imposed on manufactured tobacco under subsection (2) shall be equal to the amount by which
 - (a) the excise tax that would have been imposed under section 23 in respect of the manufactured tobacco if the applicable rates of excise tax were the rates set out in paragraphs 1(f) and 3(e) of Schedule II

- (b) the excise tax that was imposed under section 23 in respect of the manufactured tobacco. S.C. 1994, c. 29, s. 6.
- 23.35 (1) Definitions.—In this section,
- "on-reserve retailer".—"on-reserve retailer" means a retailer on a reserve in the Province of Ontario who is authorized under the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to sell black stock eigarettes, in the ordinary course of the retailer's business, to Indian consumers in the province;
- "reserve".—"reserve" means a reserve as defined in subsection 2(1) of the *Indian Act* or an Indian settlement as defined in section 2 of the *Indians and Bands on certain Indian Settlements Remission Order*:
- "supplier".—"supplier" means a wholesaler who has a permit under section 9 of the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to purchase and sell black stock cigarettes.
 - (2) Tax on excess sale of black stock. Where a supplier sells to an on-reserve retailer a

quantity of black stock, in respect of which subparagraph 1(a)(ii), 2(a)(ii) or 3(a)(ii) of Schedule II applies, that is in excess of the quantity of black stock that the on-reserve retailer is authorized under the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to purchase, an excise tax shall be imposed, levied and collected on that excess black stock.

- (3) Tax on illegal sale of black stock.—Where a supplier sells black stock, in respect of which subparagraph 1(a)(ii), 2(a)(ii) or 3(a)(ii) of Schedule II applies, to a person other than an Indian consumer in Ontario or an on-reserve retailer, an excise tax shall be imposed, levied and collected on that black stock.
- (4) When and by whom tax is payable.—The tax imposed under subsection (2) or (3) is payable by the supplier at the time of the selling referred to in that subsection.
- (5) **Amount of tax.** —The tax imposed on black stock under subsection (2) or (3) shall be equal to the amount by which
 - (a) the excise tax that would have been imposed under section 23 in respect of the black stock if the applicable rates of excise tax were the rates set out in paragraphs 1(f), 2(d) and 3(e) of Schedule II

- (b) the excise tax that was imposed under section 23 in respect of the black stock. S.C. 1994, c. 29, s. 6.
- 23.36 (1) **Definitions.**—In this section,
- "band".—"band" has the same meaning as in subsection 2(1) of the *Indian Act*;
- "council".—"council" of a band has the same meaning as in subsection 2(1) of the *Indian* Act:
- "designated retail vendor".—"designated retail vendor" means a retail vendor on a reserve in the Province of Nova Scotia who is designated in writing by the council of a band in Nova Scotia, and by the Nova Scotia Provincial Tax Commission, as a vendor from whom Indians on the reserve may buy manufactured tobacco on which tax under the *Tobacco Tax Act*, R.S.N.S. 1989, c. 470, is not payable;
- "designated wholesale vendor".—"designated wholesale vendor" means a wholesale vendor who has a wholesale vendor's permit under the *Tobacco Tax Act*, R.S.N.S. 1989, c. 470, for the sale of black stock to designated retail vendors;
- "Nova Scotia Provincial Tax Commission".—"Nova Scotia Provincial Tax Commission" means the Provincial Tax Commission of the Department of Finance of the Province of Nova Scotia;
- "reserve".—"reserve" means a reserve as defined in subsection 2(1) of the Indian Act.
- (2) **Tax on excess sale of black stock.**—Where a designated wholesale vendor sells to a designated retail vendor a quantity of black stock, in respect of which subparagraph 1(c)(ii) or 3(b)(ii) of Schedule II applies, that is in excess of the quantity of black stock that the designated wholesale vendor is authorized in writing by the Nova Scotia Provincial Tax Commission to sell to the designated retail vendor without the collection of tax under the *Tobacco Tax Act*, R.S.N.S. 1989, c. 470, an excise tax shall be imposed, levied and collected on that excess black stock.
- (3) Tax on illegal sale of black stock.—Where a designated wholesale vendor sells black stock, in respect of which subparagraph 1(c)(ii) or 3(b)(ii) of Schedule II applies, to a person other than an Indian consumer on a reserve in Nova Scotia or a designated retail vendor, an excise tax shall be imposed, levied and collected on that black stock.

- (4) When and by whom tax is payable.—The tax imposed under subsection (2) or (3) is payable by the designated wholesale vendor at the time of the selling referred to in that subsection.
- (5) **Amount of tax.**—The tax imposed on black stock under subsection (2) or (3) shall be equal to the amount by which
 - (a) the excise tax that would have been imposed under section 23 in respect of the black stock if the applicable rates of excise tax were the rates set out in paragraphs 1(f) and 3(e) of Schedule II

exceeds

- (b) the excise tax that was imposed under section 23 in respect of the black stock. S.C. 1994, c. 29, s. 6.
- **23.4** (1) **Definition of "alcohol".**—In this section, "alcohol" means ethanol and methanol produced from biomass or renewable feedstocks, but does not include ethanol or methanol produced from petroleum, natural gas or coal.
- (2) Where excise tax not payable on gasoline-alcohol.—Where gasoline or aviation gasoline has been blended with alcohol to produce a gasoline-alcohol fuel, or an aviation gasoline-alcohol fuel, containing not less than 1.35% alcohol by volume, the excise tax imposed under section 23 on gasoline or aviation gasoline is not payable on the portion of the gasoline-alcohol fuel or aviation gasoline-alcohol fuel that is equal to the percentage by volume of alcohol in the fuel. S.C. 1993, c. 25, s. 56.
- **24. Security that true returns rendered.**—For the purposes of this Part, the Minister may require every manufacturer or producer and every packer of tobacco licensed under the *Excise Act* to give security that he will render true returns of his sales as required by section 78 or by any regulations made thereunder and pay any tax imposed by this Act on the sales, which security shall be in an amount of not more than two hundred and fifty thousand dollars and not less than one thousand dollars and shall be by bond of a guarantee company authorized to do business in Canada, acceptable to the Government of Canada, or by deposit of Government of Canada bonds.

PART III.1

[REPEALED]

PART IV

EXCISE TAXES ON PLAYING CARDS AND WINES

- **25. Definition of "wine".** —In this Part, "wine" includes spirituous liquors that are the products of fruits, vegetables, roots, herbs, grain, molasses, sugar or other fermentable substances and are obtained by the normal alcoholic fermentation of the juices or extracts therefrom and not by distillation.
 - 26. [Amended R.S.C. 1985, c. 1 (2nd Supp.), s. 188; repealed S.C. 1990, c. 45, s. 6.]
- 27. (1) Excise tax on wines.—There shall be imposed, levied and collected the following excise taxes:
 - (a) a tax of \$0.0205 per litre on wines of all kinds containing not more than 1.2% of absolute ethyl alcohol by volume;

- (b) a tax of \$0.2459 per litre on wines of all kinds containing more than 1.2% of absolute ethyl alcohol by volume but not more than 7% of absolute ethyl alcohol by volume; and
- (c) a tax of \$0.5122 per litre on wines of all kinds containing more than 7% of absolute ethyl alcohol by volume.
- (2) [Repealed] R.S.C. 1985, c. 7 (2nd Supp.), s. 11; R.S.C. 1985, c. 42 (2nd Supp.), s. 3; S.C. 1990, c. 45, s. 7.
- 28. (1) By whom and when tax is payable.—The excise taxes imposed by subsection 27(1),
 - (a) in the case of wines imported into Canada, shall be paid in accordance with the provisions of the *Customs Act* by the importer, owner or other person liable to pay duties under that Act:
 - (b) in the case of wines manufactured or produced in Canada, shall be payable by the manufacturer or producer at the time when the goods are delivered to a purchaser thereof; and
 - (c) in the case of wines imported or purchased by a licensed wholesaler who is deemed by subsection 55(2) to be a *bona fide* wholesaler or jobber, shall be payable by such person at the time when the goods are delivered by him to a purchaser thereof.
- (2) **Deemed delivery to purchaser.**—For the purposes of this Part, when goods subject to tax imposed by subsection 27(1) are for the use of the manufacturer or producer thereof or for the use of a licensed wholesaler who is deemed by subsection 55(2) to be a *bona fide* wholesaler or jobber, and not for sale, the goods shall be deemed to have been delivered to a purchaser thereof at the time when the goods are appropriated for use. R.S.C. 1985, c. 1 (2nd Supp.), s. 189.
- **28.1** Where taxes not payable.—The taxes imposed under section 27 are not payable in the case of wines that are purchased or imported by and for the personal or official use of an accredited representative. S.C. 1993, c. 25, s. 57.

PART V*

TOBACCO PRODUCTS INVENTORY TAX

- 29. Definitions.—In this Part.
- "loose tobacco".—"loose tobacco" means loose, fine-cut manufactured tobacco for use in making cigarettes;
- "separate retail establishment".—"separate retail establishment" of a person means a shop or store of the person
 - (a) that is geographically separate from other places of business of the person,
 - (b) at which, in the ordinary course of the person's business, the person regularly sells, otherwise than through vending machines, tobaccco products to sonsumers, within the meaning of section 123, attending at the shop or store
 - (c) in respect of which separate records, books of account and accounting systems are maintained:

^{*}History—Part V (ss. 29 to 34) added by 1991, c. 42, s. 1.

- "taxed tobacco".—"taxed tobacco" of a person means cigarettes, tobacco sticks and loose tobacco, in respect of which tax under section 23 became payable before February 27, 1991 and that, at the beginning of that day,
 - (a) were owned by that person for sale in the ordinary course of a business of the person, and
 - (b) were not held in a vending machine
- "unit".—"unit" means one cigarette, tobacco stick or gram of loose tobacco. R.S.C. 1985, c. 15 (1st Supp.), s. 13; R.S.C. 1985, c. 7 (2nd Supp.), s. 12; S.C. 1991, c. 42, s. 1.
- **30. Imposition of tax.**—Subject to section 31, every person shall pay to Her Majesty in right of Canada a tax on all taxed tobacco of that person at the rate of
 - (a) 3 cents per cigarette;
 - (b) 3.3 cents per tobacco stick; and
 - (c) 2.04 cents per gram of loose tobacco. R.S.C. 1985, c. 7 (2nd Supp.), s. 12; S.C. 1991, c. 42, s. 1.
- **31. Exemption for small retail inventory.**—Tax under this Part in respect of the inventory of all taxed tobacco of a person that is held at the beginning of February 27, 1991 at a separate retail establishment of the person is payable only on the quantity of that inventory in excess of 200,000 units. R.S.C. 1985, c. 7 (2nd Supp.), s. 12; S.C. 1991, c. 42, s. 1.
- **32.** Taking of inventory.—Every person liable to pay tax under this Part shall, for the purposes of this Part, determine that person's inventory of all taxed tobacco. R.S.C. 1985, c. 7 (2nd Supp.), s. 12; S.C. 1991, c. 42, s. 1.
- **33.** (1) **Returns.**—Every person liable to pay tax under this Part shall, on or before May 31, 1991, file in the prescribed manner a true return in the prescribed form and containing the prescribed information.
- (2) **Separate returns.**—A person authorized under subsection 239(2) to file separate returns under Part IX in respect of a separate branch or division may file separate returns under this Part in respect of that branch or division. R.S.C. 1985, c. 7 (2nd Supp.), s. 12; S.C. 1991, c. 42, s. 1.
- **34.** (1) **Payment.**—Every person shall, for each of the months of May, June, July and August 1991, pay to the Receiver General an instalment equal to one quarter of the total tax payable by the person under this Part and the instalment for a month shall be paid on or before the last day of the month.
- (2) Interest and penalty.—Subject to subsections (3) to (6), where a person fails to pay to the Receiver General all of an instalment referred to in subsection (1) on or before the particular day on or before which the person would be required to pay the instalment if the Act enacting this Part were assented to before May 31, 1991, the person shall pay interest at the prescribed rate, and a penalty of six per cent per year, in respect of each day that is subsequent to the particular day and on which all or part of the total instalment, interest and penalty that is outstanding at the beginning of that subsequent day.
- (3) No penalty.—No penalty is payable under subsection (2) in respect of any day that is before the second day following the day on which the Act enacting this Part is assented to.
- (4) **Minimum payment and interest.**—No penalty or interest in respect of an amount payable by a person under this section is payable if, at the time the person pays the amount, the total of that penalty and interest otherwise payable is less than twenty-five dollars.

- (5) **Extension.**—The Minister may at any time extend in writing the time for filing a return, or paying an instalment, under this Part and, where the Minister so extends the time,
 - (a) the return shall be filed or the instalment shall be paid within the time as so extended;
 - (b) interest accrues under subsection (2) as if the time had not been as so extended; and
 - (c) any penalty under subsection (2) in respect of the instalment is payable only from the expiration of the time as so extended.
- (6) Security.—Where on a particular day the Minister holds security under section 80.1 for the payment of amounts payable under this Part by a person and any such amount is not paid on or before the day on or before which it is required to be paid under this Part, penalties under this section shall apply in respect of the particular day only in respect of the amount, if any, by which the total of all tax, instalments, penalty, interest and other amounts in respect of which the security was accepted that were outstanding on the particular day exceeds the value of the security at the time it was accepted by the Minister. R.S.C. 1985, c. 7 (2nd Supp.), s. 12; S.C. 1991, c. 42, s. 1.
- **35–41.** [Amended R.S.C. 1985, c. 15 (1st Supp.), ss. 14, 15; repealed R.S.C. 1985, c. 7 (2nd Supp.), s. 12.]

PART VI*

CONSUMPTION OR SALES TAX

Interpretation

- **42. Definitions.**—In this Part,
- "duty paid value".—"duty paid value" means the value of the article as it would be determined for the purpose of calculating an *ad valorem* duty upon the importation of the article into Canada under the laws relating to the customs and the *Customs Tariff* whether the article is in fact subject to *ad valorem* or other duty or not, plus the amount of the customs duties, if any, payable thereon;
- "licensed manufacturer".—"licensed manufacturer" means any manufacturer or producer licensed under this Part;
- "licensed wholesaler".—"licensed wholesaler" means any wholesaler, jobber or other dealer licensed under this Part;
- "partly manufactured goods".—"partly manufactured goods" means
 - (a) goods that are to be incorporated into or form a constituent or component part of an article that is subject to the consumption or sales tax, if the tax on the article has not yet been levied pursuant to section 50, or
 - (b) goods that are to be prepared for sale as goods subject to the consumption or sales tax by assembling, blending, mixing, cutting to size, diluting, bottling, packaging or repackaging the goods or by applying coatings or finishes to the goods, other than goods that are so prepared in a retail store for sale in that store exclusively and directly to consumers,

and the Minister is the sole judge as to whether or not goods are partly manufactured goods;

^{*}Part VI tax generally not applicable after 1990. See section 118.

- "producer or manufacturer".— "producer or manufacturer" includes any printer, publisher, lithographer, engraver or commercial artist, but does not include, for the purposes of this Part and the Schedules, any restaurateur, caterer or other person engaged in the business of preparing in a restaurant, centralized kitchen or similar establishment food or drink, whether or not the food or drink is for consumption on the premises:
- "sale price".—"sale price", for the purpose of determining the consumption or sales tax, means
 - (a) except in the case of wines, the aggregate of
 - (i) the amount charged as price before any amount payable in respect of any other tax under this Act is added thereto,
 - (ii) any amount that the purchaser is liable to pay to the vendor by reason of or in respect of the sale in addition to the amount charged as price, whether payable at the same or any other time, including, without limiting the generality of the foregoing, any amount charged for, or to make provision for, advertising, financing, servicing, warranty, commission or any other matter, and
 - (iii) the amount of the excise duties payable under the Excise Act whether the goods are sold in bond or not,

and, in the case of imported goods, the sale price shall be deemed to be the duty paid value thereof, and

- (b) in the case of wines, the aggregate of
 - (i) the amount charged as price including the amount of the excise tax payable pursuant to section 27,
 - (ii) any amount that the purchaser is liable to pay to the vendor by reason of or in respect of the sale in addition to the amount charged as price, whether payable at the same or any other time, including, without limiting the generality of the foregoing, any amount charged for, or to make provision for, advertising, financing, servicing, warranty, commission or any other matter, and
 - (iii) the amount of excise duties payable under the Excise Act whether the goods are sold in bond or not,

and, in the case of imported wines, the sale price shall be deemed to be the aggregate of the duty paid value thereof and the amount of the excise tax payable pursuant to section 27. R.S.C. 1985, c. 15 (1st Supp.), s. 16; R.S.C. 1985, c. 7 (2nd Supp.), s. 13.

- **43.** Person deemed manufacturer or producer.—Where a person has, in Canada,
- (a) put a clock or watch movement into a clock or watch case,
- (b) put a clock or watch movement into a clock or watch case and added a strap, bracelet, brooch or other accessory thereto, or
- (c) set or mounted one or more diamonds or other precious or semi-precious stones, real or imitation, in a ring, brooch or other article of jewellery,

he shall, for the purposes of this Part, be deemed to have manufactured or produced the watch, clock, ring, brooch or other article of jewellery in Canada.

43.1 Manufacturer of beverages in retail outlet deemed not to be manufacturer.—Where a person manufactures or produces in a retail outlet carbonated beverages or non-carbonated fruit flavoured beverages, other than alcoholic beverages, having less than twenty-five per cent by volume of natural fruit, for sale in that outlet exclusively and directly to

consumers for immediate consumption, he shall, for the purposes of this Part, be deemed not to be, in relation to any such beverages so manufactured or produced by him, the manufacturer or producer thereof. R.S.C. 1985, c. 7 (2nd Supp.), s. 14.

- 44. [Repealed R.S.C. 1985, c. 7 (2nd Supp.), s. 15.]
- **45.** Retreader of tires deemed manufacturer.—A person engaged in the business of retreading tires shall, for the purposes of this Part, be deemed to be the manufacturer or producer of tires retreaded by him, and tires retreaded by him for or on behalf of any other person shall be deemed to be sold, at the time they are delivered to that other person, at a sale price equal to the retreading charge.
- **45.1 Deemed sale.**—For the purposes of this Part, a person who, pursuant to a contract for labour, manufactures or produces goods from any article or material supplied by another person, other than a licensed manufacturer, for delivery to that other person shall be deemed to have sold the goods, at a sale price equal to the charge made under the contract in respect of the goods, at the time they are delivered to that other person. R.S.C. 1985, c. 15 (1st Supp.), s. 17.
- **46.** Calculation of sale price and duty paid value.—For the purpose of determining the consumption or sales tax payable under this Part,
 - (a) in calculating the sale price of goods manufactured or produced in Canada, there shall be included the amount charged as price for or in respect of
 - (i) the wrapper, package, box, bottle or other container in which the goods are contained, and
 - (ii) any other goods contained in or attached to such wrapper, package, box, bottle or other container;
 - (b) in calculating the duty paid value of imported goods that, when imported, are wrapped, packaged, put up in boxes or bottles or otherwise prepared for sale, there shall be added to the value of the goods as determined in the manner prescribed in this Part the value, similarly determined, of the wrapper, package, box, bottle or other container in which the goods are contained; and
 - (c) in calculating the sale price of goods manufactured or produced in Canada, there may be excluded
 - (i) any fees paid to the Government of Canada or the government of a province for the inspection, marking, stamping or certification thereof in respect of capacity, accuracy, standard or safety, if such fees are shown as separate items on the manufacturers' sales invoices, and
 - (ii) under such circumstances as the Governor in Council may, by regulation, prescribe, an amount representing
 - (A) the cost of erection or installation of the goods incurred by the manufacturer or producer where the goods are sold at a price that includes erection or installation, or
 - (B) the cost of transportation of the goods incurred by the manufacturer or producer in transporting the goods between premises of the manufacturer or producer in Canada, or in delivering the goods from the premises of the manufacturer or producer in Canada to the purchaser, where the goods are sold at a price that includes those costs of transportation,

determined in such manner as the Governor in Council may, by regulation, prescribe. R.S.C. 1985, c. 12 (4th Supp.), s. 13.

- 47. Deemed manufacturer of photographic prints, etc.—Where a person has, in Canada,
 - (a) processed exposed photographic film supplied by a customer to make a negative, transparency, photographic print or other photographic related good,
 - (b) produced or manufactured a negative, transparency, photographic print or other photographic related good from any good supplied by a customer, or
 - (c) sold a right to the processing, production or manufacture by him of goods described in paragraph (a) or (b),

he shall, for the purposes of this Part, be deemed to be the producer or manufacturer of the negative, transparency, photographic print or other photographic related good, and the goods shall be deemed to be sold

- (d) in the case mentioned in paragraph (a) or (b), at the time the goods are delivered to the customer, and
- (e) in the case mentioned in paragraph (c), at the time the right is sold,

and the charge made shall be deemed to be the sale price.

- **48.** (1) **Application by manufacturer.**—Any licensed manufacturer may make an application in writing to the Minister to be considered, for the purposes of this Act, as the manufacturer or producer of all other goods, in this section and section 49 referred to as "similar goods", that the licensed manufacturer sells in conjunction with his sales of goods of his manufacture or production in Canada or that are of the same class as goods the licensed manufacturer manufactures or produces in Canada.
- (2) **Additional information.**—The Minister may at any time request an applicant under this section to supply additional information in respect of his application.
- (3) **Consideration of application.**—On receiving an application, the Minister shall decide whether to approve or reject the application and shall send to the applicant a notice in writing setting out his decision and, where the Minister approves the application, the date on and after which the approval is effective.
- (4) **Effect of approval.**—Subject to subsection 49(2), on and after the date set out in a notice of decision pursuant to subsection (3), the applicant shall be deemed to be the manufacturer or producer of all similar goods that he sells and those goods shall be deemed to be
 - (a) at the time he acquires them,
 - (i) for the purposes of this Part, partly manufactured goods, and
 - (ii) for the purposes of Parts III and IV, goods described in paragraph 23(7)(b); and
 - (b) thereafter, goods produced or manufactured in Canada. R.S.C. 1985, c. 15 (1st Supp.), s. 18; R.S.C. 1985, c. 12 (4th Supp.), s. 14.
- **49.** (1) **Revocation of approval.** —The Minister may at any time, and shall on request of the applicant, revoke any approval of an application given pursuant to subsection 48(3) and, where the Minister does so, he shall send to the applicant a notice in writing of the revocation setting out the date on and after which the revocation is effective.

- (2) **Effect of revocation*.**—On and after the date set out in a notice of revocation pursuant to subsection (1),
 - (a) subsection 48(4) ceases to apply to the applicant; and
 - (b) all taxes imposed by this Act are payable, at the rate in force on that date, on any similar goods then in possession of the applicant that have been acquired free of tax by virtue of subsection 48(4) and shall be computed
 - (i) on the duty paid value of the goods, if they were imported by the applicant, or
 - (ii) on the price for which the goods were purchased by the applicant, if they were not imported by him, and the price shall include the amount of the excise duties on goods sold in bond.
- (2.1) **Presumption.**—For the purposes of subparagraph (2)(b)(ii), where an applicant has purchased goods from, or property in goods has otherwise been transferred to an applicant by, a person with whom the applicant was not dealing at arm's length at the time of the purchase or transfer for no price or for a price that was less than the price (in this subsection referred to as the "reasonable price") that would have been reasonable in the circumstances if the applicant and that person had been dealing at arm's length at that time, the applicant shall be deemed to have purchased the goods at that time for a price equal to the reasonable price.
- (3) **Restriction on re-application.**—Where an application is rejected pursuant to subsection 48(3) or approval of an application is revoked pursuant to subsection (1), the applicant may not make an application under subsection 48(1) within two years after the date of the notice of decision or the date on and after which the revocation is effective, as the case may be. R.S.C. 1985, c. 12 (4th Supp.), s. 15.
- **50.** (1) Consumption or sales tax^{**} .—There shall be imposed, levied and collected a consumption or sales tax at the rate prescribed in subsection (1.1) on the sale price or on the volume sold of all goods
 - (a) produced or manufactured in Canada
 - (i) payable, in any case other than a case mentioned in subparagraph (ii) or (iii), by the producer or manufacturer at the time when the goods are delivered to the purchaser or at the time when the property in the goods passes, whichever is the earlier,
 - (ii) payable, in a case where the contract for the sale of the goods, including a hirepurchase contract and any other contract under which property in the goods passes on satisfaction of a condition, provides that the sale price or other consideration shall be paid to the manufacturer or producer by instalments (whether the contract provides that the goods are to be delivered or property in the goods is to pass before or after payment of any or all instalments), by the producer or manufacturer at the time each of the instalments becomes payable in accordance with the terms of the contract, and
 - (iii) payable, in a case where the goods are for use by the producer or manufacturer thereof, by the producer or manufacturer at the time the goods are appropriated for use;
 - (b) imported into Canada, payable in accordance with the provisions of the *Customs Act* by the importer, owner or other person liable to pay duties under that Act;
 - (c) sold by a licensed wholesaler, payable by him at the time of delivery to the purchaser, and the tax shall be computed

^{*}For application of subsection 49(2) after 1990, see subsection 119(1).

^{**}Part VI tax generally not applicable after 1990. See section 118.

- (i) on the duty paid value of the goods, if they were imported by the licensed wholesaler, or
- (ii) on the price for which the goods were purchased by the licensed wholesaler, if they were not imported by him, which price shall include the amount of the excise duties on goods sold in bond; or
- (d) retained by a licensed wholesaler for his own use or for rental by him to others, payable by the licensed wholesaler at the time the goods are put to his own use or first rented to others, and the said tax shall be computed
 - (i) on the aggregate of the duty paid value of the goods and the amount of any taxes payable on the goods under section 27, if they were imported by the licensed wholesaler, or
 - (ii) on the aggregate of the price paid by the licensed wholesaler for the goods, the amount of any excise duties payable on the goods if sold in bond and the amount of any taxes payable on the goods under section 27, if they were not imported by the licensed wholesaler.
- (1.1) Rates of tax.—Tax imposed by subsection (1) is imposed
- (a) in the case of wines, and goods on which a duty of excise is imposed under the *Excise Act* or would be if the goods were produced or manufactured in Canada, at the rate of nineteen per cent;
- (b) in the case of goods enumerated in Schedule IV (Construction Materials and Equipment for Buildings), at the rate of nine per cent;
- (c) in the case of regular gasoline, unleaded gasoline, premium leaded gasoline, premium unleaded gasoline and diesel fuel, at the rate set opposite the applicable item in Schedule II.1, adjusted according to subsection 50.1(1) and multiplied by the rate of tax specified in paragraph (d), expressed as a decimal number and multiplied by one hundred;
- (c.1) in the case of goods imported into Canada and classified under tariff item No. 9804.30.00 of Schedule I to the *Customs Tariff*, at the rate of tax specified in paragraph (d); and
- (d) in any other case, at the rate of thirteen and one-half per cent.
- (2) **Deemed sale and delivery of gasoline or diesel fuel.**—Notwithstanding subsection (1), where gasoline or diesel fuel is delivered to a retail outlet by or on behalf of the manufacturer or producer thereof, the gasoline or diesel fuel shall be deemed to have been sold and delivered to a purchaser thereof.
- (2.1) **Transitional.**—Notwithstanding subsection (1), where gasoline, diesel fuel or aviation fuel was, immediately prior to March 1, 1987, held in inventory by or on behalf of a person described in paragraph (e) of the definition "manufacturer or producer" in subsection 2(1), as that subsection read immediately prior to March 1, 1987, who was a licensed manufacturer under this Act of gasoline, diesel fuel or aviation fuel solely by virtue of that paragraph, and the consumption or sales tax thereon had not been paid or become payable on or before February 28, 1987, the gasoline, diesel fuel or aviation fuel shall be deemed to have been sold and delivered to a purchaser thereof immediately prior to March 1, 1987.
 - (3) [Repealed]
 - (4) [Repealed]
- (5) Sales tax not payable on certain goods.—Notwithstanding anything in subsection (1), the consumption or sales tax shall not be payable on goods

- (a) sold by a licensed manufacturer to another licensed manufacturer if the goods are partly manufactured goods;
- (b) imported by a licensed manufacturer if the goods are partly manufactured goods;
- (c) imported by a licensed wholesaler otherwise than for his own use or for rental to others, on importation;
- (d) sold by a licensed manufacturer to a licensed wholesaler otherwise than for his own use or for rental to others;
- (e) sold by a licensed wholesaler to a licensed manufacturer if the goods are partly manufactured goods;
- (f) sold by a licensed wholesaler to another licensed wholesaler, but if a licensed wholesaler sells goods to another licensed wholesaler at a price less than the value on which the tax would be computed under paragraph (1)(c), the vendor forthwith becomes liable to pay the tax on the difference between such value and his sale price;
- (g) sold to or imported by a person described in paragraph (d) of the definition "manufacturer or producer" in subsection 2(1) who is a licensed manufacturer under this Act, if the goods are cosmetics;
- (h) [Repealed.]
- (i) being new motor vehicles designed for highway use, or chassis therefor, imported by a person described in paragraph (g) of the definition "manufacturer or producer" in subsection 2(1) who is a manufacturer licensed for the purposes of this Part;
- (j) being new motor vehicles designed for highway use, or chassis therefor, sold to a person described in paragraph (h) of the definition "manufacturer or producer" in subsection 2(1) who is a manufacturer licensed for the purposes of this Part;
- (k) sold to or imported by a person described in paragraph (i) of the definition "manufacturer or producer" in subsection 2(1) who is a licensed manufacturer under this Act, if the goods are goods enumerated in Schedule III.1; or
- (1) sold or leased to, or imported by, a person described in paragraph (j) of the definition "manufacturer or producer" in subsection 2(1) who is a licensed manufacturer under this Act, if the goods are prerecorded video cassettes that are new or have not been used in Canada.
- (6) Where exemption not applicable.—Where any person, other than the manufacturer or producer, importer, owner, licensed wholesaler or jobber mentioned in this section, acquires from or against any one of those persons the right to sell any goods, whether as a result of the operation of law or of any transaction not taxable under this section, the sale of the goods by him shall be taxable as if made by the manufacturer or producer, importer, owner, licensed wholesaler or jobber, as the case may be, and the person so selling is liable to pay the tax.
- (7) **Diversion of certain articles to non-exempt use, sale, etc.**—Where a motor vehicle, tractor or aircraft or a ship or other marine vessel, or a machine or tool for operation by a motor vehicle or tractor or a part or equipment for an aircraft or ship or other marine vessel
 - (a) has been purchased or imported by a person for a use by that person that renders the purchase or importation exempt from tax imposed under this Part and Part III or either of those Parts, or
- (b) have been purchased as described in subsection 68.19(1), the following rules apply:

- (c) if within five years of the time the article was first purchased or, if imported, released under the *Customs Act* for a use rendering the purchase or release exempt from tax imposed under this Part and Part III or either of those Parts, the article is applied to any use, other than of a casual nature, for which it could not, at the time of such first purchase, have been purchased or released exempt from the tax, the article shall be deemed to have been sold at the time of its first application to that use and tax imposed under this Part and Part III or either of those Parts, shall be imposed, levied and collected at the time of its first application to that use,
 - (i) in the case of an article mentioned in Schedule I having a specific rate of tax set opposite the item, at the lesser of the specific rate applicable at that time, and the specific rate, if any, applicable in the case of the article at the time the article was first purchased or imported for a use rendering the purchase or importation exempt from the tax or taxes, and
 - (ii) in any other case, on the sale price that would have been reasonable in the circumstances if the article had been sold, at the time of its first application to that use, to a person with whom the person so applying the article was dealing at arm's length,

payable by the owner of the article at the time of its first application to the use rendering it subject to tax; and

- (d) if within five years of the time the article was first purchased or, if imported, released under the *Customs Act* for a use rendering the purchase or release exempt from tax imposed under this Part and Part III or either of those Parts, the article is sold or leased, the article shall be deemed to have been sold at the time of the sale or lease and tax imposed under this Part and Part III or either of those Parts, shall, if applicable, be imposed, levied and collected at the time of the sale or lease,
 - (i) in the case of an article mentioned in Schedule I having a specific rate of tax set opposite the item, at the lesser of the specific rate applicable at that time, and the specific rate, if any, applicable in the case of the article at the time the article was first purchased or imported for a use rendering the purchase or importation exempt from the tax or taxes, and
 - (ii) in any other case,
 - (A) where the article was sold, on the sale price, or
 - (B) where the article was leased by a person to another person, on the sale price that would have been reasonable in the circumstances if the article had been sold, at the time of the lease, to that other person,

payable by the person who sold or leased the article.

- (8) **Diversion of fuel.**—Where fuel that has been purchased or imported for heating or lighting is sold or appropriated by the purchaser or importer for a purpose for which the fuel could not have been purchased or imported exempt from tax under this Part at the time of the purchase or importation, the tax imposed under this Part shall be payable by the purchaser or importer
 - (a) where the fuel is sold, at the time of delivery to the person to whom it is sold, computed at the rate of tax in force at that time
 - (i) in the case of gasoline or diesel fuel, on the volume sold, and
 - (ii) in any other case, on the sale price; and

- (b) where the fuel is appropriated, at the time of the appropriation, computed at the rate of tax in force at that time
 - (i) in the case of gasoline or diesel fuel, on the volume appropriated, and
 - (ii) in any other case, on the sale price that would have been reasonable in the circumstances if the fuel had been sold, at that time, to a person with whom the purchaser or importer was dealing at arm's length.
- (9) **Definition of "wine".**—In this section, "wine" has the meaning given that term by section 25. R.S.C. 1985, c. 15 (1st Supp.), s. 19; R.S.C. 1985, c. 1 (2nd Supp.), s. 190; R.S.C. 1985, c. 7 (2nd Supp.), s. 16; R.S.C. 1985, c. 42 (2nd Supp.), ss. 4, 5; R.S.C. 1985, c. 12 (4th Supp.), s. 16; S.C. 1988, c. 65, s. 114; S.C. 1989, c. 22, s. 3.
- **50.1** (1) **Adjustment of rates of tax on certain petroleum products.**—Commencing on April 1, 1986, the rates enumerated in Schedule II.1 shall be adjusted each January 1, April 1, July 1 and October 1, so that the rates applicable during the three month period commencing on the adjustment day are equal to the amounts obtained
 - (a) by multiplying
 - (i) the rates so enumerated

by

- (ii) the ratio, adjusted or altered in the manner prescribed pursuant to subsection (3) and rounded to the nearest one-thousandth or, where the ratio is equidistant from two one-thousandths, to the greater thereof, that
 - (A) the Industrial Product Price Index for Motor Gasoline, in the case of the rates enumerated in sections 1 and 2 of Schedule II.1, or
 - (B) the Industrial Product Price Index for Diesel Oil, in the case of the rate enumerated in section 5 of Schedule II.1.

for the twelve month period ending on the day before the three month period immediately preceding the adjustment day bears to

- (C) the Industrial Product Price Index for Motor Gasoline, in the case of the rates enumerated in sections 1 and 2 of Schedule II.1, or
- (D) the Industrial Product Price Index for Diesel Oil, in the case of the rate enumerated in section 5 of Schedule II.1.

for the twelve month period ending on September 30, 1985; and

- (b) by rounding the product obtained under paragraph (a) to the nearest one hundred-thousandth of a dollar or, if the product is equidistant from two one-hundred-thousandths of a dollar, to the greater thereof.
- (2) **Industrial Product Price Index.**—For the purposes of subsection (1), the Industrial Product Price Index for Motor Gasoline, or the Industrial Product Price Index for Diesel Oil, for a twelve month period is the result obtained
 - (a) by aggregating the most recent Industrial Product Price Index for Motor Gasoline or the most recent Industrial Product Price Index for Diesel Oil, as the case may be, for each month in the period, including the relevant data for the period from January 1, 1981 to December 31, 1985, released by Statistics Canada under the authority of the *Statistics Act* on or before the fifteenth day of the third month following the end of that period and adjusted or altered in the manner prescribed pursuant to subsection (3):
 - (b) by dividing the aggregate obtained under paragraph (a) by twelve; and

- (c) by rounding the result obtained under paragraph (b) to the nearest one-thousandth or, if the result obtained is equidistant from two one-thousandths, to the greater thereof.
- (3) **Adjustment regulations.**—The Governor in Council, on the recommendation of the **Minister** of Finance, may make regulations
 - (a) prescribing the manner in which the ratio referred to in subparagraph (1)(a)(ii) shall be adjusted or altered; and
 - (b) prescribing, for the purposes of subsection (2), the manner in which the Industrial Product Price Index for Motor Gasoline or the Industrial Product Price Index for Diesel Oil for any month shall be adjusted or altered.
- (4) **Definition of terms.**—The Governor in Council may, by regulation, define the terms "regular gasoline", "unleaded gasoline", "premium leaded gasoline" and "premium unleaded gasoline" for the purposes of paragraph 50(1.1)(c) and of Schedule II.1. R.S.C. 1985, c. 7 (2nd Supp.), s. 17; R.S.C. 1985, c. 42 (2nd Supp.), s. 6; R.S.C. 1985, c. 12 (4th Supp.), s. 17.
- **51.** (1) **Goods exempted.**—The tax imposed by section 50 does not apply to the sale or importation of the goods mentioned in Schedule III, other than those goods mentioned in Part XIII of that Schedule that are sold to or imported by persons exempt from consumption or sales tax under subsection 54(2).
- (2) **Articles partially exempted.**—The tax imposed by section 50 shall be imposed only on fifty per cent of the sale price if manufactured in Canada or fifty per cent of the duty-paid value if imported, of metric retail scales having a maximum weighing capacity of one hundred kilograms and specifically designed for the weighing of goods in retail operations, when sold or imported before January 1, 1984.
- (3) **Idem.**—The tax imposed by section 50 on the sale price of mobile homes and modular building units shall be imposed on only fifty per cent of the sale price thereof. R.S.C. 1985, c. 7 (2nd Supp.), s. 18.
- **52.** (1) **Appropriation by manufacturer or producer.**—Where goods that were manufactured or produced in Canada are appropriated by the manufacturer or producer thereof for his own use, the sale price of the goods shall be deemed to be equal to the sale price that would have been reasonable in the circumstances if the goods had been sold, at the time of the appropriation, to a person with whom the manufacturer or producer was dealing at arm's length.
- (2) **Exception.**—Subsection (1) does not apply in respect of goods, other than printed matter, manufactured by Her Majesty in right of Canada or a province (except goods manufactured by a company to which the *Government Companies Operation Act* applies) for any purpose, other than
 - (a) sale;
 - (b) use by any board, commission, railway, public utility, university, manufactory, company or agency that is owned, controlled or operated by the Government of Canada or the government of a province or under the authority of Parliament or of the legislature of a province; or
 - (c) use by Her Majesty in right of Canada or a province or Her agents or servants for commercial or mercantile purposes.
 - (3) Lease or other disposal by manufacturer or producer.—Where goods that were

manufactured or produced in Canada are leased, or the right to use any such goods, but not the property therein, is sold or given, by the manufacturer or producer thereof to a person

- (a) the goods shall be deemed to have been sold at the time the goods were so leased or the right to use them was so sold or given; and
- (b) the sale price of the goods shall be deemed to be equal to the sale price that would have been reasonable in the circumstances if the goods had been sold at that time to that person.
- (4) **Royalty or other consideration.**—Where the sale price of goods consists in whole or in part of a royalty, or any other consideration, that is unascertained at the earlier of the time the goods are delivered or the property in the goods passes to the purchaser thereof, the sale price of the goods shall be deemed to be equal to the sale price that would have been reasonable in the circumstances if the whole of the consideration had been ascertained at that time.
- (5) Disposal of cosmetics by licensed manufacturer.—Where cosmetics were manufactured or produced in Canada by a licensed manufacturer for a non-resident person who is a person described in paragraph (d) of the definition "manufacturer or producer" in subsection 2(1) and who has failed to apply for a licence as required by section 54, the licensed manufacturer shall be deemed to have sold the cosmetics for a sale price equal to the sale price that would have been reasonable in the circumstances if the cosmetics had been sold in Canada, at the earlier of the time the cosmetics were delivered or the property in the cosmetics passed to that non-resident person, by that non-resident person to a third person with whom he was dealing at arm's length.
- (6) Disposal of video cassettes by licensed manufacturer.—Where pre-recorded video cassettes that are new or have not been used in Canada were manufactured or produced in Canada by a licensed manufacturer for a non-resident person who is a person described in paragraph (j) of the definition "manufacturer or producer" in subsection 2(1) and who has failed to apply for a licence as required by section 54, the licensed manufacturer shall be deemed to have sold the cassettes for a sale price equal to the sale price that would have been reasonable in the circumstances if the cassettes had been sold in Canada, at the earlier of the time the cassettes were delivered or property in the cassettes passed to that non-resident person, by that non-resident person to a third party with whom he was dealing at arm's length. R.S.C. 1985, c. 15 (1st Supp.), s. 120; R.S.C. 1985, c. 7 (2nd Supp.), s. 19; R.S.C. 1985, c. 12 (4th Supp.), s. 18.
 - 53. [Repealed R.S.C. 1985, c. 15 (1st Supp.), s. 21.]

Licences

- **54.** (1) **Manufacturers' licences.**—Subject to this section, every manufacturer or producer shall apply for a licence for the purposes of this Part.
- (2) **Exemption.**—The Minister may grant a licence to any person applying therefor under subsection (1), but the Governor in Council, on the joint recommendation of the Minister of Finance and the Minister of National Revenue, may make regulations exempting any class of small manufacturer or producer from payment of consumption or sales tax on goods manufactured or produced by persons who are members of the class and persons so exempted are not required to apply for a licence.
- (3) Withdrawal of exemption.—An exemption granted under subsection (2) may, on the joint recommendation of the Minister of Finance and the Minister of National Revenue, be withdrawn by the Governor in Council at any time.

- (4) Cancellation.—The Minister may cancel a licence issued under this Part if, in his opinion, it is no longer required for the purposes of this Part.
- **55.** (1) **Licensed wholesaler or jobber.**—A *bona fide* wholesaler or jobber may be granted a licence but, if a wholesaler was not in possession of a licence on September 1, 1938, no licence shall be issued to him unless he is engaged exclusively or mainly in the purchase and sale of lumber or unless fifty per cent of his sales for the three months immediately preceding his application were exempt from the sales tax under this Act.
- (2) **Duty free shops.**—A person who proposes to operate and sell goods exclusively at a duty free shop licensed as such under the *Customs Act* or who operates and sells goods exclusively at such a duty free shop shall be deemed, for the purposes of this section, to be a *bona fide* wholesaler or jobber, and the Minister may grant a licence to that person notwith-standing that he does not fulfil the requirements of subsection (1).
- (3) Licensee to give security.—A wholesaler or jobber applying for a licence under this section shall give security that the wholesaler or jobber and any person other than the wholesaler or jobber who acquires from or against him the right to sell any goods, whether as a result of the operation of law or of any transaction not taxable under this Act, shall keep adequate books or accounts for the purposes of this Act and shall render true returns of sales as required by this Act, or any regulations made under this Act, and pay any tax imposed by this Act on those sales.
- (4) **Amount of security.**—The security referred to in subsection (3) shall be for an amount of not more than twenty-five thousand dollars and not less than two thousand dollars.
- (5) **Bond.**—The security referred to in subsection (3) shall be by a bank or by bond of an incorporated guarantee company authorized to do business in Canada, acceptable to the Minister, or by deposit of bonds or other securities of or guaranteed by the Government of Canada.
- (6) **Form of bond.**—Where the security referred to in subsection (3) is by bond of a guarantee company, the bond shall be in form approved by the Minister. R.S.C. 1985, c. 1 (2nd Supp.), s. 191.
- **56.** (1) Cancellation of licence.—The licence of any wholesaler or jobber who contravenes any requirement of this Part shall be cancelled forthwith and the wholesaler or jobber shall not be granted a licence within a period of two years after the date of such cancellation.
- (2) **Idem.**—The licence of any person deemed by subsection 55(2) to be a *bona fide* wholesaler or jobber shall be cancelled forthwith if he ceases to operate and sell goods exclusively at a duty free shop licensed as such under the *Customs Act*, and on cancellation of the licence pursuant to this section, all taxes imposed by this Act are forthwith payable on all goods then in the possession of the licensee that have been purchased free of tax by virtue of the licence.
- (3) Tax on cancellation*.—On the cancellation under subsection (1) of the licence granted to any licensed wholesaler, or if the licence is cancelled at the request of the licensee, or if any such licence expires and is not renewed by the licensee, all taxes imposed by this Act are forthwith payable on all goods then in the possession of the licensee that have been purchased free of tax by virtue of the licence, which taxes shall be paid at the rate in force when the licence is cancelled or expires and is not renewed and shall be computed in accordance with paragraph 50(1)(c) and Parts III and IV.

^{*}For application of subsection 56(3) after 1990, see subsection 119(2).

(4) Cancellation of bond.—Notwithstanding that a bond of a guarantee company given under section 55 has been cancelled, the bond shall be deemed to remain in force in relation to all goods in the possession of the licensed wholesaler at the time of cancellation. R.S.C. 1985, c. 1 (2nd Supp.), s. 192; S.C. 1990, c. 45, s. 8.

Evasion

- 57. (1) Powers of Minister.—Notwithstanding anything in this Part, if it appears to the Minister that payment of the consumption or sales tax is being evaded by a licensed manufacturer or licensed wholesaler, the Minister may require that the consumption or sales tax shall be imposed, levied and collected on any material specified by the Minister sold to any licensed manufacturer or licensed wholesaler or to any class of licensed manufacturers or licensed wholesalers specified by the Minister, at the time of sale of the material when produced or manufactured in Canada, or prior to release under the *Customs Act* if the material is imported by the licensed manufacturer or licensed wholesaler.
- (2) **Deduction.**—A deduction may be made, in respect of the tax imposed, levied and collected on material referred to in subsection (1), on submission by the licensed manufacturer or licensed wholesaler of proof that the material has been used in the manufacture of an article that is subject to the consumption or sales tax and on which the tax has been paid. R.S.C. 1985, c. 1 (2nd Supp.), s. 193.
- **58.** (1) **Deemed sale price.**—Notwithstanding any other provision of this Act other than subsections 52(5) and (6), for the purposes of this Part and Part III, where goods that were manufactured or produced, or deemed to have been manufactured or produced, in Canada are sold or deemed to be sold, or the property therein is otherwise transferred, by the manufacturer or producer thereof to a person with whom the manufacturer or producer was not dealing at arm's length at the earlier of the time the goods were delivered or property in the goods passed to that person for no sale price or for a sale price that is less than the sale price (in this subsection referred to as the "reasonable sale price") that would have been reasonable in the circumstances if the manufacturer or producer and that person had been dealing at arm's length at that time, the manufacturer or producer shall be deemed to have sold the goods at that time for the reasonable sale price.
- (2) **Idem.**—Notwithstanding any other provision of this Act, for the purposes of this Part and Part III, where a licensed wholesaler has purchased goods from, or property in goods has otherwise been transferred to a licensed wholesaler by, a person with whom the licensed wholesaler was not dealing at arm's length at the earlier of the time the goods were delivered or property in the goods passed to the licensed wholesaler for no price or for a price that was less than the price (in this subsection referred to as the "reasonable price") that would have been reasonable in the circumstances if the licensed wholesaler and that person had been dealing at arm's length at that time and the goods were not imported by the licensed wholesaler, the licensed wholesaler shall be deemed to have purchased the goods at that time for a price equal to the reasonable price.
- (3) **Idem.**—Notwithstanding any other provision of this Act, for the purposes of this Part and Part III, where a person has purchased or imported goods as described in subsection 68.19(1) or for a use rendering the purchase or importation exempt from tax under Part III or this Part and that person, under circumstances rendering him liable to pay the tax imposed by Part III or this Part, sells the goods or is deemed to sell the goods, or the property therein is otherwise transferred, to another person with whom he was not dealing at arm's length at the time of the sale or transfer for no sale price or for a sale price that is less than the sale price (in this subsection referred to as the "reasonable sale price") that would have been reasonable in

the circumstances if they had been dealing at arm's length at that time, that person shall be deemed to have sold the goods at that time for the reasonable sale price. R.S.C. 1985, c. 12 (4th Supp.), s. 19.

PART VII*

GENERAL

Interpretation

58.1 (1) Definitions.—In this Part,

"assessment".—"assessment" means an assessment under subsection 81.1(1) and includes a variation of an assessment and a reassessment;

"Department".—"Department" means

- (a) in relation to Part I, the Office of the Superintendent of Financial Institutions, and
- (b) in relation to any other Part, the Department of National Revenue;

"Deputy Minister".—"Deputy Minister" means

- (a) in relation to Part I, the Superintendent of Financial Institutions, and
- (b) in relation to any other Part, the Deputy Minister of National Revenue.
- "Tribunal".—"Tribunal" means the Canadian International Trade Tribunal established by subsection 3(1) of the Canadian International Trade Tribunal Act.
- (2) **Same meaning.**—Words and expressions used in this Part in connection with a tax under any other Part have the same meaning as in that other Part unless the contrary intention appears.
- (3) **Remittance.**—Unless the contrary intention appears, any reference in this Part to "pay" or "payment", in relation to taxes imposed under this Act, shall be construed as including, in relation to taxes imposed under Part II or II.2, a reference to "remit" or "remittance", and other parts of speech and grammatical forms of those words shall be construed in a corresponding manner. R.S.C. 1985, c. 15 (1st Supp.), s. 22; R.S.C. 1985, c. 7 (2nd Supp.), s. 20; R.S.C. 1985, c. 12 (4th Supp.), s. 20; R.S.C. 1985, c. 47 (4th Supp.), s. 52; S.C. 1992, c. 1, s. 65; S.C. 1994, c. 13, s. 7(1)(g).

Regulations

- **59.** (1) **Regulations.**—The Minister of Finance or the Minister of National Revenue, as the case may be, may make such regulations as he deems necessary or advisable for carrying out the provisions of this Act.
- (2) **Delegation of powers.**—The Minister may authorize a designated officer or officer of a designated class of officers to exercise powers or perform duties of the Minister, including judicial or quasi-judicial powers or duties, under this Act.
 - (3) [Repealed.]

^{*}Part VII applies to the FST inventory rebate. See subsection 120(6).

- (3.1) **Regulations prescribing rate of interest.**—The Governor in Council may, on the recommendation of the Minister of Finance, make regulations prescribing a rate of interest or rules for determining a rate of interest for the purposes of this Act.
- (3.2) **Regulations designating ships' stores.**—The Governor in Council may make regulations designating, for the purposes of sections 23, 68.17 and 70, certain classes of goods as ships' stores for use on board a conveyance within such class of conveyances as may be prescribed in the regulations and limiting the quantity of such goods that may be so used within such period of time as may be prescribed in the regulations.
- (3.3) **Regulations respecting reasonable price.**—The Governor in Council may make regulations respecting the method for determining the reasonable sale price or reasonable price, as the case may be, for any goods for the purposes of subsections 23(10) and 49(2.1), subparagraphs 50(7)(c)(ii) and (d)(ii), subsection 50(8) and sections 52 and 58.
- (4) **Enforcement.**—The regulations shall be enforced in the same manner as any provision of this Act.
- (5) Oaths and declarations.—Any person designated by the Minister may receive or administer any oath or declaration required by this Act, or by any regulation made under this Act, and every person so designated has, with respect to any such oath or declaration, has all the powers of a commissioner for taking affidavits. R.S.C. 1985, c. 15 (1st Supp.), s. 23; R.S.C. 1985, c. 7 (2nd Supp.), s. 21; R.S.C. 1985, c. 12 (4th Supp.), s. 21; S.C. 1990, c. 45, s. 9; S.C. 1993, c. 25, s. 58; S.C. 1993, c. 27, s. 1.

Stamps

- **60. Preparation and use of stamps.**—The Minister may direct the preparation and use of stamps for the purposes of this Act.
- **61.** Cancellation.—In any case in which an adhesive stamp is required to be cancelled, and no other method of cancellation is prescribed, the stamp shall be deemed to be cancelled if lines or marks are drawn across or impressed thereon so as effectually to render the stamp incapable of being used for any other instrument.
- **62.** Liability.—Every person who, being required by or pursuant to this Act to affix or cancel stamps, fails to do so as required is liable to Her Majesty for the amount of stamps he should have affixed or cancelled and that amount is recoverable in the Federal Court, or in any other court of competent jurisdiction as a debt due to Her Majesty.
- **63.** (1) **Appointment of stamp vendors.**—The Minister may appoint postmasters or other officers of the Crown to sell stamps prepared for the purposes of this Act and he may authorize other persons to be vendors who may purchase stamps so prepared for resale.
- (2) **Reduced price.**—The Governor in Council may by regulation fix a reduced price at which stamps prepared for the purposes of this Act may be sold to persons authorized by the Minister to be vendors under subsection (1).

Licences

- **64.** (1) **Application for licence.**—Every person who is required, by or pursuant to Part III or IV, to pay taxes shall, from time to time as required by the regulations, apply for a licence in respect of that Part.
- (2) **Granting of licence and exemption.**—The Minister may grant a licence to any person applying therefor under subsection (1) and may, by regulation, exempt any person or

class of persons from obtaining a licence under this section in respect of a specified Part, and any person who is a member of a class of small manufacturer or producer the members of which are exempted, pursuant to subsection 54(2), from payment of consumption or sales tax on goods manufactured or produced by them shall, whether or not he is a person or member of a class of persons exempted from obtaining a licence under this section, be exempt from payment of excise tax on goods manufactured or produced by him.

- (3) Cancellation of licences.—The Minister may cancel a licence issued under this section if, in his opinion, it is no longer required for the purposes of this Act. R.S.C. 1985, c. 12 (4th Supp.), s. 22.
- **65.** Offence and punishment.—Every person who fails to apply for a licence as required by this Act is guilty of an offence and liable to a fine not exceeding one thousand dollars.

Exported Goods

- **66.** (1) **Exemption on exported goods.**—Subject to subsection (2), the tax imposed by this Act is not payable if evidence satisfactory to the Minister is produced to establish
 - (a) that the goods in respect of which it is imposed have been exported from Canada by the manufacturer, producer or licensed wholesaler by whom the tax would otherwise be payable in accordance with any regulations made under this Act that are applicable thereto;
 - (b) in the case of spirits and fermented liquors (except wine), that the goods have been exported from Canada in bond; or
 - (c) that the goods in respect of which it is imposed have been sold by the operator of a duty free shop and have been exported from Canada by the purchaser of the goods, in accordance with the regulations made under the *Customs Act*.
- (2) Where exemption not applicable.—Subsection (1) does not apply in respect of taxes imposed under Part III in respect of tobacco products mentioned in Schedule II. R.S.C. 1985, c. 1 (2nd Supp.), s. 194; R.S.C. 1985, c. 7 (2nd Supp.), s. 22; S.C. 1993, c. 25, s. 59.
- **66.1 Exemption for tobacco products sold at duty free shop.**—The tax imposed under subsection 23(5) on tobacco products mentioned in Schedule II is not payable if evidence satisfactory to the Minister is produced to establish that the tobacco products have been sold by the operator of a duty free shop, in accordance with the regulations made under the *Customs Act*, and have been exported from Canada by the purchaser of the tobacco products in accordance with the regulations made under that Act. S.C. 1993, c. 25, s. 59.

Liability of the Crown

- **67.** Taxes on goods imported by Crown.—The taxes imposed by Parts III, IV and VI are applicable
 - (a) to goods imported by Her Majesty in right of Canada; and
 - (b) to goods imported by Her Majesty in right of a province.

Deductions, Refunds and Drawbacks

68. Payment where error.—Where a person, otherwise than pursuant to an assessment, has paid any moneys in error, whether by reason of mistake of fact or law or otherwise, and the moneys have been taken into account as taxes, penalties, interest or other sums under this Act, an amount equal to the amount of those moneys shall, subject to this Part, be paid to that person

if he applies therefor within two years after payment of the moneys. R.S.C. 1985, c. 15 (1st Supp.), s. 24; R.S.C. 1985, c. 1 (2nd Supp.), s. 195; R.S.C. 1985, c. 7 (2nd Supp.), ss. 23, 24.

- **68.1** (1) Payment where goods exported*.—Where tax under this Act has been paid in respect of any goods and a person has, in accordance with regulations made by the Minister, exported the goods from Canada, an amount equal to the amount of that tax shall, subject to this Part, be paid to that person if that person applies therefor within two years after the export of the goods.
- (2) **Exception.**—Subsection (1) does not apply in respect of taxes imposed under Part III in respect of tobacco products mentioned in Schedule II. R.S.C. 1985, c. 7 (2nd Supp.), s. 34; S.C. 1993, c. 25, s. 60.
- **68.11 Payment where adjustment.**—Where tax under Part II has been remitted by a licensed air carrier and the carrier has, in accordance with subsection 18(1), made an adjustment or refund in respect of the tax, an amount equal to the amount of that adjustment or refund shall, subject to this Part, be paid to that carrier if it applies therefor within two years after the adjustment or refund. R.S.C. 1985, c. 7 (2nd Supp.), s. 34.
- **68.12** Payment where adjustment.—Where tax under Part II.1 has been paid by a licensee in respect of any taxable service and the licensee has made an adjustment or refund of the amount charged because of an error or because the service was not provided, or was only partially provided, by the licensee, an amount equal to the proportion of the amount of that tax that the amount of the adjustment or refund is of the amount charged shall, subject to this Part, be paid to the licensee if he applies therefor within two years after the adjustment or refund. R.S.C. 1985, c. 7 (2nd Supp.), s. 34.
- **68.13 Payment where licence subsequently issued.**—Where tax under Part II.1 has been paid by a licensee in respect of any taxable service and the person, in this section referred to as the "purchaser", acquiring the service from the licensee
 - (a) was required at the time the amount charged to the purchaser for the service was paid or payable, whichever is the earlier, to apply for a licence under that Part and was thereafter issued such a licence, and
 - (b) provided the service, at a time when the purchaser was required to apply for a licence under that Part or held such a licence, to another person for an amount charged that was paid or payable, whichever is the earlier, at that time,

an amount equal to the proportion of the amount of that tax that the amount of the taxable sales of the service by the purchaser is of the amount of the total sales of the service by the purchaser shall, subject to this Part, be paid to the purchaser if he applies therefor within two years after the later of the time the service was provided by the purchaser and the time the licence was issued to the purchaser. R.S.C. 1985, c. 7 (2nd Supp.), s. 34.

- **68.14** (1) **Payment where use by province.**—Where tax under Part II.1 has been paid by a licensee in respect of any taxable service and Her Majesty in right of a province has acquired the service for any purpose other than
 - (a) provision to another person for an amount charged,
 - (b) use by any board, commission, railway, public utility, university, manufactory, company or agency owned, controlled or operated by the government of the province or under the authority of the legislature or the lieutenant governor in council of the province, or

^{*}Refunds under s. 68.1 are restricted where goods after 1990. See subsec. 70.1(3).

(c) use by Her Majesty in that right, or by any agents or servants of Her Majesty in that right, for any commercial or mercantile purposes,

an amount equal to the amount of that tax shall, subject to this Part, be paid either to that licensee or to Her Majesty in that right, as the case may require, if the licensee or Her Majesty applies therefor within two years after Her Majesty acquired the service.

- (2) **Exception.**—No amount shall be paid pursuant to subsection (1) to a licensee who provides a taxable service to Her Majesty in right of a province in respect of which there is in force at the time the service is provided a reciprocal taxation agreement referred to in section 32 of the *Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act.* R.S.C. 1985, c. 7 (2nd Supp.), s. 34.
 - 68.15 (1) Definitions.—In this section,
- "arm's length sale".—"arm's length sale" means the provision of a taxable service for an amount charged by a licensee to a person with whom the licensee is dealing at arm's length at the time the service is provided;
- "fiscal period".—"fiscal period" means a fiscal period as determined for the purposes of the *Income Tax Act*.
- (2) Payment where bad debt.—Where tax under Part II.1 has been paid, or tax under Part II.2 has been remitted, by a licensee in respect of an arm's length sale occurring on or after February 16, 1984 and the licensee has established, in accordance with generally accepted accounting practices, that any debt owing to the licensee in respect of the sale has become in whole or in part a bad debt and has accordingly written off the debt as a bad debt in his books of account, an amount equal to the proportion of the amount of that tax that the amount of the debt written off is of the aggregate of the amount charged for the taxable service and the amount of the tax shall, subject to this Part, be paid to that licensee if the licensee applies therefor in the two years after the end of his fiscal period during which the debt was so written off.
- (3) **Recovery of payment.**—Where a licensee recovers all or any part of a debt in respect of which an amount is paid to him pursuant to subsection (2), in this subsection referred to as the "refunded amount", that licensee shall forthwith pay to Her Majesty an amount equal to the proportion of the refunded amount that the amount of the debt so recovered is of the amount of the debt written off in respect of which the refunded amount was paid. R.S.C. 1985, c. 7 (2nd Supp.), s. 34; R.S.C. 1985, c. 12 (4th Supp.), s. 23.
- **68.151 Payment where adjustment.**—Where tax under Part II.2 has been remitted by a licensee and the licensee has, in accordance with subsection 21.31(1), made an adjustment or refund in respect of the tax, an amount equal to the amount of that adjustment or refund shall, subject to this Part, be paid to that licensee if the licensee applies therefor within two years after he made the adjustment or refund. R.S.C. 1985, c. 12 (4th Supp.), s. 24.
- **68.152 Payment where licence subsequently issued.**—Where tax under Part II.2 has been paid by a person in respect of any taxable service acquired by that person and that person
 - (a) was required, at the time the tax became payable, to apply for a licence under that Part and was thereafter issued such a licence, and
 - (b) at a time when that person was required to apply for a licence under that Part or held such a licence,
 - (i) provided the service to another person for an amount charged that was paid or payable, whichever is the earlier, at that time, or

(ii) used the service directly in providing another taxable service, other than a paging service, to another person,

an amount equal to the proportion of the amount of that tax that the uses referred to in paragraph (b) of the taxable service are of the total use of that taxable service by that person shall, subject to this Part, be paid to that person if he applies therefor within two years after the later of the time the service was so provided or used by that person and the time the licence was issued to that person. R.S.C. 1985, c. 12 (4th Supp.), s. 24.

- **68.153** Payment where resale.—Where tax under Part II.2 has been paid in respect of any taxable service by a person who was not a telecommunications carrier at the time the tax became payable and that person has provided the service for an amount charged to another person who acquired the service for a use described in subsection 21.28(1) or (2) and held a licence under that Part or Part II.1 at the time of that acquisition, an amount equal to the proportion of the amount of that tax that the provision of that service to that other person is of the total use of that service by that person shall, subject to this Part, be paid to that person if he applies therefor within two years after he provided the service to that other person. R.S.C. 1985, c. 12 (4th Supp.), s. 24.
- **68.16** (1) Payment where certain uses of gasoline.—Where tax under Part III has been paid in respect of any gasoline and the gasoline has been purchased by
 - (a) Her Majesty in right of Canada or a province or any agent of Her Majesty in right of Canada or a province, before 1991,
 - (b) a municipality, before 1991,
 - (c) a person for commercial or business purposes, before 1991,
 - (d) a farmer for farming purposes, before 1991,
 - (e) a fisherman, hunter or trapper for commercial fishing, hunting or trapping, before 1991,
 - (f) a person under conditions for which relief from the consumption or sales tax is provided by any provision of this Act, other than subsection 50(5), before 1991,
 - (g) a person of such other class of persons as the Governor in Council may by regulation prescribe, before 1991,
 - (g.1) a registered charity, within the meaning of the *Income Tax Act*,
 - (g.2) a registered Canadian amateur athletic association, within the meaning of the *Income Tax Act*, or
 - (g.3) a person who has been certified by a qualified medical practitioner to be suffering from a permanent impairment of locomotion to such an extent that the use of public transportation by that person would be hazardous,

for the sole use of the purchaser and not for resale, an amount equal to that portion of the tax equal to one and one-half cents per litre shall, subject to this Part, be paid

- (h) to the purchaser, or
- (i) in accordance with such terms and conditions as the Governor in Council may by regulation prescribe, to the manufacturer, producer, wholesaler, jobber or other dealer, if the purchaser applies therefor within two years after he purchased the gasoline.
- (2) Payment where certain uses of aviation gasoline.—Where tax under Part III has been paid in respect of any aviation gasoline and the aviation gasoline has been purchased before 1991 by a person

- (a) providing public air transportation of passengers, freight or mail,
- (b) providing air services directly related to
 - (i) the exploration and development of natural resources,
 - (ii) aerial spraying, seeding and pest control,
 - (iii) forestry,
 - (iv) fish cultivation,
 - (v) aerial construction operations using rotating wing aircraft,
 - (vi) aerial fire control, fire protection and fire fighting, or
 - (vii) map making operations, or
- (c) engaged in the business of testing aircraft engines,

for the sole use of the purchaser to provide a service mentioned in paragraph (a) or (b) or to test aircraft engines, as the case may be, and not for resale or any other use, an amount equal to that portion of the tax equal to one and one-half cents per litre shall, subject to this Part, be paid

- (d) to the purchaser, or
- (e) in accordance with such terms and conditions as the Governor in Council may by regulation prescribe, to the manufacturer, producer, wholesaler, jobber or other dealer,
- if the purchaser applies therefor within two years after he purchased the aviation gasoline.
- (3) **Presumption.**—Any payment made to a person referred to in paragraph (1)(i) or (2)(e) shall, for the purposes of subsection (4) and sections 98 to 102, be deemed to have been made to the purchaser.
- (4) **Recovery of payment.**—Where an amount has been paid pursuant to subsection (1) or (2) to a person who sells or uses the gasoline or aviation gasoline for a purpose that does not entitle its purchaser to that payment, the purchaser shall forthwith pay to Her Majesty an amount equal to the amount of the payment.
- (5) Commercial or business purposes.—For the purposes of paragraph (1)(c), the expression "commercial or business purposes" shall have such meaning as the Governor in Council may determine by regulation.
- (6) To whom payment made.—Where a person has purchased gasoline or aviation gasoline in respect of which tax under Part III has been paid and has recovered the cost of that gasoline or aviation gasoline, or any part thereof, from, in the case of gasoline, a person described in any of paragraphs (1)(a) to (g) or, in the case of aviation gasoline, a person described in any of paragraphs (2)(a) to (c), for the purpose of paying an amount pursuant to subsection (1) or (2), the Governor in Council may, by regulation, determine
 - (a) the manner in which the amount shall be calculated; and
 - (b) who, between the person who purchased the gasoline or aviation gasoline and the person from whom all or any part of the cost has been recovered, shall be deemed to be the purchaser of that gasoline or aviation gasoline. R.S.C. 1985, c. 7 (2nd Supp.), s. 34; S.C. 1990, c. 45, s. 10.
- **68.161 Refund of excise tax where foreign taxes are paid.**—The Minister may refund to the manufacturer or producer of tobacco products (within the meaning assigned by section 23.1) the tax paid under subsection 23.2(1) in respect of the tobacco products where
 - (a) the manufacturer or producer provides to the Minister evidence satisfactory to the

- Minister that all taxes imposed on the tobacco products by the national government of the country to which the tobacco products were exported have been paid; and
- (b) the manufacturer or producer applies to the Minister for the repayment within two years after the tobacco products were exported. S.C. 1994, c. 29, s. 7.
- 68.162 (1) Definitions.—In this section,
- "inventory".—"inventory" of a person at any time means the goods that are owned at that time by the person and are for sale at that time in the ordinary course of the person's business:
- "large retailer".—"large retailer" means a retailer who applies for a tax rebate under subsection (2) of at least \$50,000 in respect of tax- paid manufactured tobacco in the retailer's inventory at the beginning of February 9, 1994;
- "retailer".—"retailer" means a person who sells tax-paid manufactured tobacco primarily to consumers:
- "tax-paid manufactured tobacco".—"tax-paid manufactured tobacco" means manufactured tobacco in respect of which excise tax under section 23 became payable before February 9, 1994.
- (2) **Tobacco inventory tax rebate.**—The Minister may pay to a person who held tax-paid manufactured tobacco in the person's inventory at the beginning of February 9, 1994 a tax rebate equal to the total of
 - (a) \$0.025 multiplied by the number of cigarettes and tobacco sticks in that inventory, and
 - (b) \$0.025 multiplied by the number of grams of manufactured tobacco, other than cigarettes and tobacco sticks, in that inventory.
- (3) Conditions for rebate.—To qualify to receive a rebate under subsection (2), a person must
 - (a) determine the inventory of tax-paid manufactured tobacco held by the person at the beginning of February 9, 1994; and
 - (b) apply to the Minister for the rebate before August 9, 1994 in any form and manner that is authorized by the Minister.
- (4) One application per person.—A person shall not apply more than once for a rebate under subsection (2).
- (5) Submission of application by retailer.—A person making an application for a rebate under subsection (2) who is a retailer other than a large retailer shall submit the application to the person who supplied the retailer, during the six-month period ending immediately before February 9, 1994, with more tax-paid manufactured tobacco for resale in the ordinary course of the retailer's business than was supplied to the retailer by any other person for that purpose during that period.
- (6) Filing of application with Minister.—A person to whom an application is submitted under subsection (5) shall file the application with the Minister, in any form and manner that is authorized by the Minister, before the sixteenth day of the month after the month in which the person receives the application.
- (7) **Filing of application by mail.**—Where a person who is required by subsection (6) to file an application with the Minister does so by mailing the application, the application shall be deemed to have been filed with the Minister on the day on which the application was mailed, and the date of the postmark is evidence of that day.

- (8) **Penalty for failure to comply with subsection (6).**—A person who does not comply with subsection (6) is liable to a penalty of
 - (a) \$50 in respect of each application that is required by that subsection to be filed by the person and that the person does not file; and
 - (b) \$5 in respect of each application that is required by that subsection to be filed by the person and that the person files later than the time within which the application is required by that subsection to be filed. S.C. 1994, c. 29, s. 7.
 - 68.163 (1) Definitions.—In this section,
- "inventory".—"inventory" of a person at any time means the goods that are owned at that time by the person and are for sale at that time in the ordinary course of the person's business;
- "on-reserve retailer".—"on-reserve retailer" means a retailer on a reserve in the Province of Ontario who is authorized under the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to sell black stock cigarettes, in the ordinary course of the retailer's business, to Indian consumers in the province;
- "reserve".—"reserve" means a reserve as defined in subsection 2(1) of the *Indian Act* or an Indian settlement as defined in section 2 of the *Indians and Bands on certain Indian Settlements Remission Order*;
- "separate retail establishment".—"separate retail establishment" of a person means a retail establishment of the person that is geographically separate from other places of business of the person and at which, in the ordinary course of the person's business, the person regularly sells cigarettes to consumers;
- "tax-paid cigarettes".—"tax-paid cigarettes" means cigarettes in respect of which excise tax under section 23 became payable before February 22, 1994 and that
 - (a) are marked or stamped in accordance with the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to clearly indicate that the cigarettes are intended for retail sale in the Province of Ontario, or
 - (b) are black stock eigarettes held for resale to on-reserve retailers by a supplier who has a permit under section 9 of that Act to purchase and sell black stock eigarettes.
- (2) Ontario cigarette inventory tax rebate.—The Minister may pay to a person who held tax-paid cigarettes in the person's inventory at the beginning of February 22, 1994 a tax rebate equal to \$0.023 multiplied by the number of tax-paid cigarettes in that inventory in excess of the greater of
 - (a) 1,000,000 cigarettes, and
 - (b) the number of cigarettes obtained by multiplying 200,000 cigarettes by the number of separate retail establishments of the person in the Province of Ontario on February 22, 1994.
- (3) Conditions for rebate. To qualify to receive a rebate under subsection (2), a person must
 - (a) determine the inventory of tax-paid cigarettes held by the person at the beginning of February 22, 1994; and
 - (b) apply to the Minister for the rebate before August 22, 1994 in any form and manner that is authorized by the Minister.

- (4) One application per person.—A person shall not apply more than once for a rebate under subsection (2). S.C. 1994, c. 29, s. 7.
 - 68.164 (1) Definitions.—In this section,
- "inventory".—"inventory" of a person at any time means the goods that are owned at that time by the person and are for sale at that time in the ordinary course of the person's business;
- "separate retail establishment".— "separate retail establishment" of a person means a retail establishment of the person that is geographically separate from other places of business of the person and at which, in the ordinary course of the person's business, the person regularly sells cigarettes to consumers;
- "tax-paid cigarettes".—"tax-paid cigarettes" means cigarettes in respect of which excise tax under section 23 became payable before February 9, 1994 and that are marked or stamped in accordance with the *Tobacco Tax Act*, R.S.Q. 1977, c. I-2, to clearly indicate that the cigarettes are intended for retail sale in the Province of Quebec.
- (2) Quebec cigarette inventory tax rebate.—The Minister may pay to a person who held tax-paid cigarettes in the person's inventory at the beginning of February 9, 1994 a tax rebate equal to \$0.025 multiplied by the number of tax-paid cigarettes in that inventory in excess of the greater of
 - (a) 1,000,000 cigarettes, and
 - (b) the number of cigarettes obtained by multiplying 200,000 cigarettes by the number of separate retail establishments of the person in the Province of Quebec on February 9, 1994.
- (3) Conditions for rebate.—To qualify to receive a rebate under subsection (2), a person must
 - (a) determine the inventory of tax-paid cigarettes held by the person at the beginning of February 9, 1994; and
 - (b) apply to the Minister for the rebate before August 9, 1994 in any form and manner that is authorized by the Minister.
- (4) One application per person.—A person shall not apply more than once for a rebate under subsection (2). S.C. 1994, c. 29, s. 7.
 - **68.165** (1) **Definitions.**—In this section,
- "band".—"band" has the same meaning as in subsection 2(1) of the *Indian Act*;
- "council".—"council" of a band has the same meaning as in subsection 2(1) of the *Indian* Act;
- "designated retail vendor".—"designated retail vendor" means a retail vendor on a reserve in the Province of Nova Scotia who is designated in writing by the council of a band in Nova Scotia, and by the Provincial Tax Commission of the Department of Finance of the Province of Nova Scotia, as a vendor from whom Indians on the reserve may buy manufactured tobacco on which tax under the *Tobacco Tax Act*, R.S.N.S. 1989, c. 470, is not payable;
- "inventory".—"inventory" of a person at any time means the goods that are owned at that time by the person and are for sale at that time in the ordinary course of the person's business:

- "licensed wholesale vendor".—"licensed wholesale vendor" means a person who has a wholesale vendor's permit issued under the *Tohacco Tax Act*, R.S.N.S. 1989, c. 470;
- "Nova Scotia retail vendor".—"Nova Scotia retail vendor" means a vendor, other than a designated retail vendor who is not a licensed wholesale vendor, who retails manufactured tobacco to consumers in the Province of Nova Scotia:
- "reserve".—"reserve" means a reserve as defined in subsection 2(1) of the *Indian Act*;
- "separate retail establishment".—"separate retail establishment" of a person means a retail establishment of the person that is geographically separate from other places of business of the person and at which, in the ordinary course of the person's business, the person regularly sells manufactured tobacco to consumers.
- (2) **Reference date.**—The reference date referred to in subsection (5) is the reference date specified as required under paragraph (3)(g).
 - (3) **Application of subsection (4).**—Subsection (4) applies where
 - (a) a licensed wholesale vendor makes an application to a licensed tobacco manufacturer for a reduction in the amount payable, or a refund of an amount paid, by the licensed wholesale vendor for manufactured tobacco that the licensed tobacco manufacturer has sold to the licensed wholesale vendor;
 - (b) the licensed wholesale vendor determines the licensed wholesale vendor's inventories at the beginning of April 15, 1994 of Atlantic manufactured tobacco, black stock manufactured tobacco and black stock eigarettes;
 - (c) the licensed wholesale vendor determines the licensed wholesale vendor's inventories at the beginning of June 1, 1994 of Atlantic manufactured tobacco and black stock manufactured tobacco;
 - (d) the licensed wholesale vendor specifies in the application a quantity of
 - (i) black stock cigarettes held in the inventory of the licensed wholesale vendor at the beginning of April 15, 1994,
 - (ii) Atlantic manufactured tobacco and black stock manufactured tobacco sold and delivered by the licensed wholesale vendor to Nova Scotia retail vendors after April 14, 1994 and before June 1, 1994, or
 - (iii) Atlantic manufactured tobacco held in the inventory of the licensed wholesale vendor at the beginning of June 1, 1994;
 - (e) the quantity of Atlantic manufactured tobacco, black stock manufactured tobacco and black stock cigarettes specified in the application by the licensed wholesale vendor has not been specified in any other application made by the licensed wholesale vendor for a reduction or refund in respect of which the licensed tobacco manufacturer or any other licensed tobacco manufacturer is entitled to a deduction under subsection (4);
 - (f) the total of the quantity of Atlantic manufactured tobacco, black stock manufactured tobacco and black stock cigarettes specified in the application and all other quantities of Atlantic manufactured tobacco, black stock manufactured tobacco and black stock cigarettes specified by the licensed wholesale vendor in applications to the licensed tobacco manufacturer or other licensed tobacco manufacturers for reductions or refunds in respect of which the licensed tobacco manufacturer or other licensed tobacco manufacturers are entitled to deductions under subsection (4) does not exceed the total quantity of Atlantic manufactured tobacco, black stock manufactured tobacco and black stock cigarettes determined under subsection (5) in relation to the licensed wholesale vendor:

- (g) the licensed wholesale vendor specifies in the application either February 10, 1994 or April 14, 1994 as the reference date for the purposes of all applications each of which is an application by the licensed wholesale vendor for a reduction or refund in respect of which a licensed tobacco manufacturer may be entitled to a deduction under subsection (4), 68.166(4), 68.167(4) or 68.168(4);
- (h) the application is made before January 1995, in any form and manner that is authorized by the Minister;
- (i) the application is approved by the Minister of Finance of the Province of Nova Scotia; and
- (j) in response to the application, the licensed tobacco manufacturer makes a reduction in the amount payable, or a refund of an amount paid, by the licensed wholesale vendor for manufactured tobacco.
- (4) **Deduction from excise tax payable.**—Where this subsection applies, there may be deducted, in computing the excise taxes payable under section 23 by the licensed tobacco manufacturer within two years after the reduction or refund referred to in paragraph (3)(j), an amount equal to the lesser of the amount of the reduction or refund and the amount in respect of the specified quantity of Atlantic manufactured tobacco, black stock manufactured tobacco and black stock cigarettes referred to in paragraph (3)(d) that is equal to the total of
 - (a) \$0.01 multiplied by the number of cigarettes in the specified quantity of Atlantic manufactured tobacco, black stock manufactured tobacco and black stock cigarettes, and
 - (b) \$0.0027 multiplied by the number of grams of black stock manufactured tobacco in the specified quantity of Atlantic manufactured tobacco, black stock manufactured tobacco and black stock cigarettes.
- (5) Limit on specified quantity.—For the purposes of paragraph (3)(f), the total quantity of Atlantic manufactured tobacco, black stock manufactured tobacco and black stock cigarettes determined under this subsection in relation to a licensed wholesale vendor is the total of
 - (a) the number of cigarettes, if any, determined by the formula

$$A + B + (C \times \frac{D}{F}) - F$$

- A is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor to Nova Scotia retail vendors after April 14, 1994 and before June 1, 1994,
- B is the number of black stock cigarettes held in the inventory of the licensed wholesale vendor at the beginning of April 15, 1994 other than at a retail outlet of the licensed wholesale vendor,
- C is the number of cigarettes that are Atlantic manufactured tobacco held in the inventory of the licensed wholesale vendor at the beginning of June 1, 1994 other than at a retail outlet of the licensed wholesale vendor.
- D is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor to Nova Scotia retail vendors in the three-month period ending on the reference date,
- E is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor in the three-month period ending on the reference date.

F is the lesser of

(i) the number of cigarettes that are Atlantic manufactured tobacco determined by the formula

$$B + (G \times \frac{H}{J}) + K$$

where

- B is the number of black stock cigarettes held in the inventory of the licensed wholesale vendor at the beginning of April 15, 1994 other than at a retail outlet of the licensed wholesale vendor,
- G is the number of cigarettes that are Atlantic manufactured tobacco held in the inventory of the licensed wholesale vendor at the beginning of April 15, 1994 other than at a retail outlet of the licensed wholesale vendor,
- H is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor to Nova Scotia retail vendors in the three-month period ending on April 14, 1994,
- J is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor in the three-month period ending on April 14, 1994, and
- K is the number of cigarettes that are Atlantic manufactured tobacco held at the beginning of April 15, 1994 in the inventories of the licensed wholesale vendor at the retail outlets of the licensed wholesale vendor in the Province of Nova Scotia, where the licensed wholesale vendor is also a Nova Scotia retail vendor, and
- (ii) the greater of
 - (A) 1,000,000 cigarettes, and
 - (B) the number of cigarettes obtained by multiplying 200,000 cigarettes by the number of separate retail establishments of the licensed wholesale vendor in the Province of Nova Scotia on April 15, 1994, and
- (b) the number of grams of black stock manufactured tobacco, if any, determined by the formula

$$L + (M \times \frac{N}{P}) - (Q \times \frac{R}{S}) - T$$

- L is the number of grams of black stock manufactured tobacco sold and delivered by the licensed wholesale vendor to Nova Scotia retail vendors after April 14, 1994 and before June 1, 1994.
- M is the number of grams of black stock manufactured tobacco held in the inventory of the licensed wholesale vendor at the beginning of June 1, 1994 other than at a retail outlet of the licensed wholesale vendor,
- N is the number of grams of black stock manufactured tobacco sold and delivered by the licensed wholesale vendor to Nova Scotia retail vendors in the three-month period ending on the reference date,
- P is the number of grams of black stock manufactured tobacco sold and delivered by the licensed wholesale vendor in the three-month period ending on the reference date,
- Q is the number of grams of black stock manufactured tobacco held in the inventory of

- the licensed wholesale vendor at the beginning of April 15, 1994 other than at a retail outlet of the licensed wholesale vendor.
- R is the number of grams of black stock manufactured tobacco sold and delivered by the licensed wholesale vendor to Nova Scotia retail vendors in the three-month period ending on April 14, 1994,
- S is the number of grams of black stock manufactured tobacco sold and delivered by the licensed wholesale vendor in the three-month period ending on April 14, 1994, and
- T is the number of grams of black stock manufactured tobacco held at the beginning of April 15, 1994 in the inventories of the licensed wholesale vendor at the retail outlets of the licensed wholesale vendor in the Province of Nova Scotia, where the licensed wholesale vendor is also a Nova Scotia retail vendor.
- (6) New wholesale vendor.—Where a person has become a licensed wholesale vendor after April 14, 1994 and before June 1, 1994, paragraph (3)(g) does not apply in respect of the licensed wholesale vendor and the references in subsection (5) to "the reference date" shall be read as "May 31, 1994".
- (7) Where vendor sells wholesale and retail.—For the purposes of this section, where a licensed wholesale vendor is also a Nova Scotia retail vendor
 - (a) the Atlantic manufactured tobacco and black stock manufactured tobacco held at the beginning of April 15, 1994 in the inventory of the licensed wholesale vendor at a retail outlet of the licensed wholesale vendor in the Province of Nova Scotia (other than a retail outlet on a reserve) shall be deemed to have been sold and delivered by the licensed wholesale vendor to Nova Scotia retail vendors immediately after the beginning of April 15, 1994; and
 - (b) the Atlantic manufactured tobacco or black stock manufactured tobacco that is delivered by or on behalf of the licensed wholesale vendor to a retail outlet of the licensed wholesale vendor in the Province of Nova Scotia shall be deemed to be sold and delivered by the licensed wholesale vendor to a Nova Scotia retail vendor at the time it is delivered to that retail outlet. S.C. 1994, c. 29, s. 7.
 - **68.166** (1) **Definitions.**—In this section.
- "inventory".— "inventory" of a person at any time means the goods that are owned at that time by the person and are for sale at that time in the ordinary course of the person's business;
- "licensed retail vendor".—"licensed retail vendor" means a retail vendor licensed as such under the *Tobacco Tax Act*, R.S.N.B. 1973, c. T-7;
- "licensed wholesale vendor".—"licensed wholesale vendor" means a wholesale vendor licensed as such under the *Tobacco Tax Act*, R.S.N.B, 1973, c. T-7;
- "separate retail establishment".— "separate retail establishment" of a person means a retail establishment of the person that is geographically separate from other places of business of the person and at which, in the ordinary course of the person's business, the person regularly sells manufactured tobacco to consumers.
- (2) **Reference date.**—The reference date referred to in subsection (5) is the reference date specified as required under paragraph (3)(g).
 - (3) Application of subsection (4).—Subsection (4) applies where
 - (a) a licensed wholesale vendor makes an application to a licensed tobacco manufacturer for a reduction in the amount payable, or a refund of an amount paid, by the licensed

wholesale vendor for manufactured tobacco that the licensed tobacco manufacturer has sold to the licensed wholesale vendor;

- (b) the licensed wholesale vendor determines the licensed wholesale vendor's inventories at the beginning of February 11, 1994 of Atlantic manufactured tobacco and black stock manufactured tobacco;
- (c) the licensed wholesale vendor determines the licensed wholesale vendor's inventories at the beginning of June 1, 1994 of Atlantic manufactured tobacco and black stock manufactured tobacco;
- (d) the licensed wholesale vendor specifies in the application a quantity of
 - (i) Atlantic manufactured tobacco and black stock manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors after February 10, 1994 and before June 1, 1994, or
 - (ii) Atlantic manufactured tobacco and black stock manufactured tobacco held in the inventory of the licensed wholesale vendor at the beginning of June 1, 1994;
- (e) the quantity of Atlantic manufactured tobacco and black stock manufactured tobacco specified in the application by the licensed wholesale vendor has not been specified in any other application made by the licensed wholesale vendor for a reduction or refund in respect of which the licensed tobacco manufacturer or any other licensed tobacco manufacturer is entitled to a deduction under subsection (4);
- (f) the total of the quantity of Atlantic manufactured tobacco and black stock manufactured tobacco specified in the application and all other quantities of Atlantic manufactured tobacco and black stock manufactured tobacco specified by the licensed wholesale vendor in applications to the licensed tobacco manufacturer or other licensed tobacco manufacturers for reductions or refunds in respect of which the licensed tobacco manufacturer or other licensed tobacco manufacturers are entitled to deductions under subsection (4) does not exceed the total quantity of Atlantic manufactured tobacco and black stock manufactured tobacco determined under subsection (5) in relation to the licensed wholesale vendor:
- (g) the licensed wholesale vendor specifies in the application either February 10, 1994 or April 14, 1994 as the reference date for the purposes of all applications each of which is an application by the licensed wholesale vendor for a reduction or refund in respect of which a licensed tobacco manufacturer may be entitled to a deduction under subsection (4), 68.165(4), 68.167(4) or 68.168(4);
- (h) the application is made before January 1995, in any form and manner that is authorized by the Minister;
- (i) the application is approved by the Minister of Finance of the Province of New Brunswick; and
- (j) in response to the application, the licensed tobacco manufacturer makes a reduction in the amount payable, or a refund of an amount paid, by the licensed wholesale vendor for manufactured tobacco.
- (4) **Deduction from excise tax payable.** Where this subsection applies, there may be deducted, in computing the excise taxes payable under section 23 by the licensed tobacco manufacturer within two years after the reduction or refund referred to in paragraph (3)(j), an amount equal to the lesser of the amount of the reduction or refund and the amount in respect of the specified quantity of Atlantic manufactured tobacco and black stock manufactured tobacco referred to in paragraph (3)(d) that is equal to the total of

- (a) \$0.01 multiplied by the number of cigarettes in the specified quantity of Atlantic manufactured tobacco and black stock manufactured tobacco,
- (b) \$0.0049 multiplied by the number of tobacco sticks in the specified quantity of Atlantic manufactured tobacco and black stock manufactured tobacco, and
- (c) \$0.0012 multiplied by the number of grams of black stock manufactured tobacco in the specified quantity of Atlantic manufactured tobacco and black stock manufactured tobacco.
- (5) Limit on specified quantity.—For the purposes of paragraph (3)(f), the total quantity of Atlantic manufactured tobacco and black stock manufactured tobacco determined under this subsection in relation to a licensed wholesale vendor is the total of
 - (a) the number of cigarettes, if any, determined by the formula

$$A + (B \times \frac{C}{D}) - F$$

where

- A is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors after February 10, 1994 and before June 1, 1994,
- B is the number of cigarettes that are Atlantic manufactured tobacco held in the inventory of the licensed wholesale vendor at the beginning of June 1, 1994 other than at a retail outlet of the licensed wholesale vendor,
- C is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors in the three-month period ending on the reference date,
- D is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor in the three-month period ending on the reference date, and

F is the lesser of

(i) the number of cigarettes determined by the formula

$$(G \times \frac{H}{I}) + K$$

- G is the number of cigarettes that are Atlantic manufactured tobacco held in the inventory of the licensed wholesale vendor at the beginning of February 11, 1994 other than at a retail outlet of the licensed wholesale vendor,
- H is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors in the three-month period ending on February 10, 1994,
- J is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor in the three-month period ending on February 10, 1994, and
- K is the number of cigarettes that are Atlantic manufactured tobacco held at the beginning of February 11, 1994 in the inventories of the licensed wholesale vendor at the retail outlets of the licensed wholesale vendor in the Province of New

Brunswick, where the licensed wholesale vendor is also a licensed retail vendor, and

- (ii) the greater of
- (A) 1,000,000 cigarettes, and
- (B) the number of cigarettes obtained by multiplying 200,000 cigarettes by the number of separate retail establishments of the licensed wholesale vendor in the Province of New Brunswick on February 11, 1994,
- (b) the number of tobacco sticks, if any, determined by the formula

$$L + (M \times \frac{N}{P}) - (Q \times \frac{R}{S}) - T$$

where

- L is the number of tobacco sticks that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors after February 10, 1994 and before June 1, 1994,
- M is the number of tobacco sticks that are Atlantic manufactured tobacco in the inventory of the licensed wholesale vendor at the beginning of June 1, 1994 other than at a retail outlet of the licensed wholesale vendor,
- N is the number of tobacco sticks that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors in the three-month period ending on the reference date,
- P is the number of tobacco sticks that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor in the three-month period ending on the reference date.
- Q is the number of tobacco sticks that are Atlantic manufactured tobacco held in the inventory of the licensed wholesale vendor at the beginning of February 11. 1994 other than at a retail outlet of the licensed wholesale vendor,
- R is the number of tobacco sticks that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors in the three-month period ending on February 10, 1994,
- S is the number of tobacco sticks that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor in the three-month period ending on February 10, 1994, and
- T is the number of tobacco sticks that are Atlantic manufactured tobacco held at the beginning of February 11, 1994 in the inventories of the licensed wholesale vendor at the retail outlets of the licensed wholesale vendor in the Province of New Brunswick, where the licensed wholesale vendor is also a licensed retail vendor, and
- (e) the number of grams of black stock manufactured tobacco, if any, determined by the formula

$$U + (V \times \frac{W}{X}) - (Y \times \frac{Z}{A_1}) - B_1$$

where

U is the number of grams of black stock manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors after February 10, 1994 and before June 1, 1994.

- V is the number of grams of black stock manufactured tobacco held in the inventory of the licensed wholesale vendor at the beginning of June 1, 1994 other than at a retail outlet of the licensed wholesale vendor.
- W is the number of grams of black stock manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors in the three-month period ending on the reference date,
- X is the number of grams of black stock manufactured tobacco sold and delivered by the licensed wholesale vendor in the three-month period ending on the reference date,
- Y is the number of grams of black stock manufactured tobacco held in the inventory of the licensed wholesale vendor at the beginning of February 11, 1994 other than at a retail outlet of the licensed wholesale vendor.
- Z is the number of grams of black stock manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors in the three-month period ending on February 10, 1994.
- A₁ is the number of grams of black stock manufactured tobacco sold and delivered by the licensed wholesale vendor in the three-month period ending on February 10, 1994, and
- B₁ is the number of grams of black stock manufactured tobacco held at the beginning of February 11, 1994 in the inventories of the licensed wholesale vendor at the retail outlets of the licensed wholesale vendor in the Province of New Brunswick, where the licensed wholesale vendor is also a licensed retail vendor.
- (6) New wholesale vendor.—Where a person has become a licensed wholesale vendor after April 14, 1994 and before June 1, 1994, paragraph (3)(g) does not apply in respect of the licensed wholesale vendor and the references in subsection (5) to "the reference date" shall be read as "May 31, 1994".
- (7) Where vendor sells wholesale and retail.—For the purposes of this section, where a licensed wholesale vendor is also a licensed retail vendor
 - (a) the Atlantic manufactured tobacco and black stock manufactured tobacco held at the beginning of February 11, 1994 in the inventory of the licensed wholesale vendor at a retail outlet of the licensed wholesale vendor in the Province of New Brunswick shall be deemed to have been sold and delivered by the licensed wholesale vendor to licensed retail vendors immediately after the beginning of February 11, 1994; and
 - (b) the Atlantic manufactured tobacco or black stock manufactured tobacco that is delivered by or on behalf of the licensed wholesale vendor to a retail outlet of the licensed wholesale vendor in the Province of New Brunswick shall be deemed to be sold and delivered by the licensed wholesale vendor to a licensed retail vendor at the time it is delivered to that retail outlet, S.C., 1994, c. 29, s. 7.

68.167 (1) **Definitions.**—In this section.

- "inventory".—"inventory" of a person at any time means the goods that are owned at that time by the person and are for sale at that time in the ordinary course of the person's business;
- "licensed retail vendor".—"licensed retail vendor" means a retail vendor licensed as such under the *Health Tax Act*, R.S.P.E.I. 1988, c. H-3;
- "licensed wholesale vendor".—"licensed wholesale vendor" means a wholesale vendor licensed as such under the *Health Tax Act*, R.S.P.E.I. 1988, c. H-3;
- "separate retail establishment".— "separate retail establishment" of a person means a retail establishment of the person that is geographically separate from other places of business of the person and at which, in the ordinary course of the person's business, the person regularly sells manufactured tobacco to consumers.

- (2) **Reference date.**—The reference date referred to in subsection (5) is the reference date specified as required under paragraph (3)(g).
 - (3) Application of subsection (4).—Subsection (4) applies where
 - (a) a licensed wholesale vendor makes an application to a licensed tobacco manufacturer for a reduction in the amount payable, or a refund of an amount paid, by the licensed wholesale vendor for manufactured tobacco that the licensed tobacco manufacturer has sold to the licensed wholesale vendor:
 - (b) the licensed wholesale vendor determines the licensed wholesale vendor's inventories at the beginning of March 26, 1994 of Atlantic manufactured tobacco and black stock manufactured tobacco;
 - (c) the licensed wholesale vendor determines the licensed wholesale vendor's inventory at the beginning of June 1, 1994 of black stock manufactured tobacco;
 - (d) the licensed wholesale vendor specifies in the application a quantity of
 - (i) Atlantic manufactured tobacco and black stock manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors after March 25, 1994 and before June 1, 1994, or
 - (ii) black stock manufactured tobacco held in the inventory of the licensed wholesale vendor at the beginning of June 1, 1994;
 - (e) the quantity of Atlantic manufactured tobacco and black stock manufactured tobacco specified in the application by the licensed wholesale vendor has not been specified in any other application made by the licensed wholesale vendor for a reduction or refund in respect of which the licensed tobacco manufacturer or any other licensed tobacco manufacturer is entitled to a deduction under subsection (4);
 - (f) the total of the quantity of Atlantic manufactured tobacco and black stock manufactured tobacco specified in the application and all other quantities of Atlantic manufactured tobacco and black stock manufactured tobacco specified by the licensed wholesale vendor in applications to the licensed tobacco manufacturer or other licensed tobacco manufacturers for reductions or refunds in respect of which the licensed tobacco manufacturer or other licensed tobacco manufacturers are entitled to deductions under subsection (4) does not exceed the total quantity of Atlantic manufactured tobacco and black stock manufactured tobacco determined under subsection (5) in relation to the licensed wholesale vendor;
 - (g) the licensed wholesale vendor specifies in the application either February 10, 1994 or April 14, 1994 as the reference date for the purposes of all applications each of which is an application by the licensed wholesale vendor for a reduction or refund in respect of which a licensed tobacco manufacturer may be entitled to a deduction under subsection (4), 68.165(4), 68.166(4) or 68.168(4);
 - (h) the application is made before January 1995, in any form and manner that is authorized by the Minister;
 - (i) the application is approved by the Treasurer of the Province of Prince Edward Island; and
 - (j) in response to the application, the licensed tobacco manufacturer makes a reduction in the amount payable, or a refund of an amount paid, by the licensed wholesale vendor for manufactured tobacco.
 - (4) **Deduction from excise tax payable.**—Where this subsection applies, there may be

deducted, in computing the excise taxes payable under section 23 by the licensed tobacco manufacturer within two years after the reduction or refund referred to in paragraph (3)(j), an amount equal to the lesser of the amount of the reduction or refund and the amount in respect of the specified quantity of Atlantic manufactured tobacco and black stock manufactured tobacco referred to in paragraph (3)(d) that is equal to the total of

- (a) \$0.02125 multiplied by the number of cigarettes in the specified quantity of Atlantic manufactured tobacco and black stock manufactured tobacco,
- (b) \$0.009 multiplied by the number of tobacco sticks in the specified quantity of Atlantic manufactured tobacco and black stock manufactured tobacco, and
- (c) \$0.0019 multiplied by the number of grams of black stock manufactured tobacco in the specified quantity of Atlantic manufactured tobacco and black stock manufactured tobacco.
- (5) Limit on specified quantity.—For the purposes of paragraph (3)(f), the total quantity of Atlantic manufactured tobacco and black stock manufactured tobacco determined under this subsection in relation to a licensed wholesale vendor is the total of
 - (a) the number of cigarettes, if any, determined by the formula

$$A - B$$

where

- A is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors after March 25, 1994 and before June 1, 1994, and
- B is the lesser of
 - (i) the number of cigarettes determined by the formula

$$(C \times \frac{D}{E}) + F$$

- C is the number of cigarettes that are Atlantic manufactured tobacco held in the inventory of the licensed wholesale vendor at the beginning of March 26, 1994 other than at a retail outlet of the licensed wholesale vendor.
- D is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors in the three-month period ending on March 25, 1994,
- E is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor in the three-month period ending on March 25, 1994, and
- F is the number of cigarettes that are Atlantic manufactured tobacco held at the beginning of March 26, 1994 in the inventories of the licensed wholesale vendor at the retail outlets of the licensed wholesale vendor in the Province of Prince Edward Island, where the licensed wholesale vendor is also a licensed retail vendor, and
- (ii) the greater of
 - (A) 1,000,000 cigarettes, and
 - (B) the number of cigarettes obtained by multiplying 200,000 cigarettes by the

number of separate retail establishments of the licensed wholesale vendor in the Province of Prince Edward Island on March 26, 1994,

(b) the number of tobacco sticks, if any, determined by the formula

$$G-(H\times\frac{J}{K}\,)-L$$

where

- G is the number of tobacco sticks that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors after March 25, 1994 and before June 1, 1994,
- H is the number of tobacco sticks that are Atlantic manufactured tobacco held in the inventory of the licensed wholesale vendor at the beginning of March 26, 1994 other than at a retail outlet of the licensed wholesale vendor,
- J is the number of tobacco sticks that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors in the three-month period ending on March 25, 1994,
- K is the number of tobacco sticks that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor in the three-month period ending on March 25, 1994, and
- L is the number of tobacco sticks that are Atlantic manufactured tobacco held at the beginning of March 26, 1994 in the inventories of the licensed wholesale vendor at the retail outlets of the licensed wholesale vendor in the Province of Prince Edward Island, where the licensed wholesale vendor is also a licensed retail vendor, and
- (c) the number of grams of black stock manufactured tobacco, if any, determined by the formula

$$M + (N \times \frac{P}{O}) - (R \times \frac{S}{T}) - U$$

- M is the number of grams of black stock manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors after March 25, 1994 and before June 1, 1994.
- N is the number of grams of black stock manufactured tobacco held in the inventory of the licensed wholesale vendor at the beginning of June 1, 1994 other than at a retail outlet of the licensed wholesale vendor,
- P is the number of grams of black stock manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors in the three-month period ending on the reference date.
- Q is the number of grams of black stock manufactured tobacco sold and delivered by the licensed wholesale vendor in the three-month period ending on the reference date,
- R is the number of grams of black stock manufactured tobacco held in the inventory of the licensed wholesale vendor at the beginning of March 26, 1994 other than at a retail outlet of the licensed wholesale vendor,
- S is the number of grams of black stock manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors in the three-month period ending on March 25, 1994,

- T is the number of grams of black stock manufactured tobacco sold and delivered by the licensed wholesale vendor in the three-month period ending on March 25, 1994, and
- U is the number of grams of black stock manufactured tobacco held at the beginning of March 26, 1994 in the inventories of the licensed wholesale vendor at the retail outlets of the licensed wholesale vendor in the Province of Prince Edward Island, where the licensed wholesale vendor is also a licensed retail vendor.
- (6) New wholesale vendor.—Where a person has become a licensed wholesale vendor after April 14, 1994 and before June 1, 1994, paragraph (3)(g) does not apply in respect of the licensed wholesale vendor and the references in subsection (5) to "the reference date" shall be read as "May 31, 1994".
- (7) Where vendor sells wholesale and retail.—For the purposes of this section, where a licensed wholesale vendor is also a licensed retail vendor
 - (a) the Atlantic manufactured tobacco and black stock manufactured tobacco held at the beginning of March 26, 1994 in the inventory of the licensed wholesale vendor at a retail outlet of the licensed wholesale vendor in the Province of Prince Edward Island shall be deemed to have been sold and delivered by the licensed wholesale vendor to licensed retail vendors immediately after the beginning of March 26, 1994; and
 - (b) the Atlantic manufactured tobacco or black stock manufactured tobacco that is delivered by or on behalf of the licensed wholesale vendor to a retail outlet of the licensed wholesale vendor in the Province of Prince Edward Island shall be deemed to be sold and delivered by the licensed wholesale vendor to a licensed retail vendor at the time it is delivered to that retail outlet. S.C. 1994, c. 29, s. 7.
 - **68.168** (1) **Definitions.**—In this section,
- "inventory".—"inventory" of a person at any time means the goods that are owned at that time by the person and are for sale at that time in the ordinary course of the person's business:
- "licensed retail vendor".—"licensed retail vendor" means a retail vendor licensed as such under the *Health Tax Act*, R.S.P.E.I. 1988, c. H-3;
- "licensed wholesale vendor".—"licensed wholesale vendor" means a wholesale vendor licensed as such under the *Health Tax Act*, R.S.P.E.I. 1988, c. H-3;
- "separate retail establishment".—"separate retail establishment" of a person means a retail establishment of the person that is geographically separate from other places of business of the person and at which, in the ordinary course of the person's business, the person regularly sells manufactured tobacco to consumers.
- (2) **Reference date.**—The reference date referred to in subsection (5) is the reference date specified as required under paragraph (3)(g).
 - (3) Application of subsection (4).—Subsection (4) applies where
 - (a) a licensed wholesale vendor makes an application for the purposes of this section to a licensed tobacco manufacturer for a reduction in the amount payable, or a refund of an amount paid, by the licensed wholesale vendor for manufactured tobacco that the licensed tobacco manufacturer has sold to the licensed wholesale vendor:
 - (b) only one such application is made by the licensed wholesale vendor to the licensed tobacco manufacturer:
 - (c) the licensed wholesale vendor determines the licensed wholesale vendor's inventory at the beginning of June 1, 1994 of cigarettes that are Atlantic manufactured tobacco;

- (d) the licensed wholesale vendor specifies in the application a number of cigarettes that are Atlantic manufactured tobacco held in the inventory of the licensed wholesale vendor at the beginning of June 1, 1994;
- (e) the number of cigarettes specified in the application by the licensed wholesale vendor has not been specified in any other application made by the licensed wholesale vendor for a reduction or refund in respect of which any other licensed tobacco manufacturer is entitled to a deduction under subsection (4);
- (f) the total of the number of cigarettes specified in the application and all other numbers of cigarettes specified by the licensed wholesale vendor in applications to other licensed tobacco manufacturers for reductions or refunds in respect of which the other licensed tobacco manufacturers are entitled to deductions under subsection (4) does not exceed the total number of cigarettes determined under subsection (5) in relation to the licensed wholesale vendor:
- (g) the licensed wholesale vendor specifies in the application either February 10, 1994 or April 14, 1994 as the reference date for the purposes of all applications each of which is an application by the licensed wholesale vendor for a reduction or refund in respect of which a licensed tobacco manufacturer may be entitled to a deduction under subsection (4), 68.165(4), 68.166(4) or 68.167(4);
- (h) the application is made before January 1995, in any form and manner that is authorized by the Minister;
- (i) the application is approved by the Treasurer of the Province of Prince Edward Island; and
- (j) in response to the application, the licensed tobacco manufacturer makes a reduction in the amount payable, or a refund of an amount paid, by the licensed wholesale vendor for manufactured tobacco.
- (4) **Deduction from excise tax payable.**—Where this subsection applies, there may be deducted, in computing the excise taxes payable under section 23 by the licensed tobacco manufacturer within two years after the reduction or refund referred to in paragraph (3)(j), an amount equal to the lesser of the amount of the reduction or refund and the amount determined by multiplying \$0.01 by the number of cigarettes specified by the licensed wholesale vendor as required under paragraph (3)(d).
- (5) Limit on specified quantity.—For the purposes of paragraph (3)(f), the total number of cigarettes determined under this subsection in relation to a licensed wholesale vendor is
 - (a) where the number of cigarettes that are Atlantic manufactured tobacco determined by the formula "A B" in paragraph 68.167(5)(a) in relation to the licensed wholesale vendor is zero or greater than zero, the number of cigarettes determined by the formula

$$C \times \frac{D}{E}$$

- C is the number of cigarettes that are Atlantic manufactured tobacco held in the inventory of the licensed wholesale vendor at the beginning of June 1, 1994,
- D is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors in the three-month period ending on the reference date, and
- E is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered

by the licensed wholesale vendor in the three-month period ending on the reference date; and

(b) in any other case, the number of cigarettes, if any, determined by the formula

$$F + (G \times \frac{H}{J}) - K$$

where

- F is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors after March 25, 1994 and before June 1, 1994.
- G is the number of cigarettes that are Atlantic manufactured tobacco held in the inventory of the licensed wholesale vendor at the beginning of June 1, 1994 other than at a retail outlet of the licensed wholesale vendor,
- H is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors in the three-month period ending on the reference date,
- J is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor in the three-month period ending on the reference date, and

K is the lesser of

(i) the number of cigarettes determined by the formula

$$(L \times \frac{M}{N}) + P$$

- L is the number of cigarettes that are Atlantic manufactured tobacco held in the inventory of the licensed wholesale vendor at the beginning of March 26, 1994 other than at a retail outlet of the licensed wholesale vendor,
- M is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor to licensed retail vendors in the three-month period ending on March 25, 1994,
- N is the number of cigarettes that are Atlantic manufactured tobacco sold and delivered by the licensed wholesale vendor in the three-month period ending on March 25, 1994, and
- P is the number of cigarettes that are Atlantic manufactured tobacco held at the beginning of March 26, 1994 in the inventories of the licensed wholesale vendor at the retail outlets of the licensed wholesale vendor in the Province of Prince Edward Island, where the licensed wholesale vendor is also a licensed retail vendor, and
- (ii) the greater of
 - (A) 1,000,000 cigarettes, and
 - (B) the number of cigarettes obtained by multiplying 200,000 cigarettes by the number of separate retail establishments of the licensed wholesale vendor in the Province of Prince Edward Island on March 26, 1994.
- (6) New wholesale vendor.—Where a person has become a licensed wholesale vendor after April 14, 1994 and before June 1, 1994, paragraph (3)(g) does not apply in respect of the

licensed wholesale vendor and the references in subsection (5) to "the reference date" shall be read as "May 31, 1994".

- (7) Where vendor sells wholesale and retail. -For the purposes of this section, where a licensed wholesale vendor is also a licensed retail vendor
 - (a) the cigarettes that are Atlantic manufactured tobacco held at the beginning of March 26, 1994 in the inventory of the licensed wholesale vendor at a retail outlet of the licensed wholesale vendor in the Province of Prince Edward Island shall be deemed to have been sold and delivered by the licensed wholesale vendor to licensed retail vendors immediately after the beginning of March 26, 1994; and
 - (b) the cigarettes that are Atlantic manufactured tobacco delivered by or on behalf of the licensed wholesale vendor to a retail outlet of the licensed wholesale vendor in the Province of Prince Edward Island shall be deemed to be sold and delivered by the licensed wholesale vendor to a licensed retail vendor at the time they are delivered to that retail outlet, S.C. 1994, c. 29, s. 7.
 - 68.169 (1) Definitions.—In this section,
- "licensed retail vendor".—"licensed retail vendor" means a retail vendor licensed as such under the *Health Tax Act*, R.S.P.E.I. 1988, c. H-3;
- "licensed wholesale vendor".—"licensed wholesale vendor" means a wholesale vendor licensed as such under the *Health Tax Act*, R.S.P.E.I. 1988, c. H-3.
- (2) **Rebate to P.E.I.** Atlantic manufactured tobacco wholesaler.—Where a licensed wholesale vendor has, after May 31, 1994, sold cigarettes or tobacco sticks that are Atlantic manufactured tobacco to a licensed retail vendor, or to a consumer in the Province of Prince Edward Island for consumption by the consumer or by others at the expense of the consumer, the Minister may pay to the licensed wholesale vendor a tax rebate equal to the total of
 - (a) \$0.01125 multiplied by the number of those cigarettes, and
 - (b) \$0.009 multiplied by the number of those tobacco sticks.
- (3) **Rebate to P.E.I. black stock wholesaler.** Where a licensed wholesale vendor has sold, after August 1994, cigarettes or tobacco sticks that are black stock to a licensed retail vendor, or to a consumer in the Province of Prince Edward Island for consumption by the consumer or by others at the expense of the consumer, the Minister may pay to the licensed wholesale vendor a tax rebate equal to the total of
 - (a) \$0.01125 multiplied by the number of those cigarettes, and
 - (b) \$0.009 multiplied by the number of those tobacco sticks.
- (4) Conditions for rebate. To qualify to receive a rebate under subsection (2) or (3) in respect of cigarettes or tobacco sticks, the licensed wholesale vendor must
 - (a) apply to the Minister for the rebate, within two years after the sale of the cigarettes or tobacco sticks by the licensed wholesale vendor, in any form and manner that is authorized by the Minister; and
 - (b) include in the application a certification by the Treasurer of the Province of Prince Edward Island that all tax payable in respect of the cigarettes or tobacco sticks under the *Health Tax Act*, R.S.P.E.I. 1988, c. H-3, has been paid.
- (5) Only one application per month. A licensed wholesale vendor shall not apply for a rebate under subsection (2) or (3) more often than once a month. S.C. 1994, c. 29, s. 7.

- **68.17** (1) Payment where use as ships' stores*.—Where tax under Part III, IV, V or VI has been paid in respect of any goods and a manufacturer, producer, wholesaler, jobber or other dealer has sold the goods for use as ships' stores, an amount equal to the amount of that tax shall, subject to this Part, be paid to that dealer if that dealer applies therefor within two years after that sale of the goods.
- (2) **Exception.**—Subsection (1) does not apply in respect of taxes imposed under Part III in respect of tobacco products mentioned in Schedule II. R.S.C. 1985, c. 7 (2nd Supp.), s. 34; S.C. 1991, c. 42, s. 2; S.C. 1993, c. 25, s. 61.
- **68.18** (1) **Payment where goods in inventory.**—Where tax under Part III, IV or VI has been paid in respect of any goods and a person holds the goods in an unused condition in inventory on the day a licence is granted to him pursuant to section 54 or 64 and could thereafter have obtained the goods exempt from tax under subsection 23(7) or 50(5), an amount equal to the amount of that tax shall, subject to this Part, be paid to that person if he applies therefor within two years after the licence was granted.
- (2) **Idem.**—Where tax under Part III, IV or VI has been paid in respect of any goods and a person holds the goods in an unused condition in inventory on the day a licence is granted to him pursuant to section 55 and could thereafter have obtained the goods exempt from tax under subsection 23(6), (7) or (8) or 50(5), an amount equal to the lesser of the amount of that tax and the amount of tax under Part III, IV or VI that would be payable if the goods were acquired in a taxable transaction by that person on that day shall, subject to this Part, be paid to that person if he applies therefor within two years after the licence was granted.
- (3) **Exception.**—No amount equal to the amount of tax under Part III, IV or VI shall be paid pursuant to subsection (2) to a person in respect of any goods that are not subject to tax under that Part on the day a licence is granted to that person pursuant to section 55.
- (4) **Unused condition.**—For the purposes of this section, goods are in an unused condition if they are new or have not been used in Canada. R.S.C. 1985, c. 7 (2nd Supp.), s. 34.
- **68.19** (1) Payment where use by province**.—Where tax under Part III, IV or VI has been paid in respect of any goods and Her Majesty in right of a province has purchased or imported the goods for any purpose other than
 - (a) resale,
 - (b) use by any board, commission, railway, public utility, university, manufactory, company or agency owned, controlled or operated by the government of the province or under the authority of the legislature or the lieutenant governor in council of the province, or
 - (c) use by Her Majesty in that right, or by any agents or servants of Her Majesty in that right, in connection with the manufacture or production of goods or use for other commercial or mercantile purposes,

an amount equal to the amount of that tax shall, subject to this Part, be paid either to Her Majesty in that right or to the importer, transferee, manufacturer, producer, wholesaler, jobber or other dealer, as the case may require, if Her Majesty or the dealer applies therefor within two years after Her Majesty purchased or imported the goods.

^{*}Refunds under s. 68.17 not available for goods sold after 1990. See subsec. 70.1(4).

^{**}Refund under s. 68.19 restricted after 1990. See subsec. 70.1(5).

- (2) **Exception.**—No amount shall be paid pursuant to subsection (1) to an importer, transferee, manufacturer, producer, wholesaler, jobber or other dealer who supplies goods to Her Majesty in right of a province in respect of which there is in force at the time the goods are supplied a reciprocal taxation agreement referred to in section 32 of the *Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act.* R.S.C. 1985, c. 7 (2nd Supp.), s. 34; S.C. 1991, c. 42, s. 3.
- **68.2** (1) Payment where subsequent exempt sale*.—Where tax under Part III or VI has been paid in respect of any goods and subsequently the goods are sold to a purchaser in circumstances that, by virtue of the nature of that purchaser or the use to which the goods are to be put or by virtue of both such nature and use, would have rendered the sale to that purchaser exempt or relieved from that tax under subsection 23(6), paragraph 23(8)(b) or subsection 50(5) or 51(1) had the goods been manufactured in Canada and sold to the purchaser by the manufacturer or producer thereof, an amount equal to the amount of that tax shall, subject to this Part, be paid to the person who sold the goods to that purchaser if the person who sold the goods applies therefor within two years after he sold the goods.
- (2) **Application of anti-avoidance rule.**—Section 274 applies, with such modifications as the circumstances require, to any transaction
 - (a) that is a sale of goods that would give rise to the application of, or that is the basis of an application under, subsection (1), and
 - (b) that takes place after December 17, 1990 and before 1991,

and for that purpose, every reference in that section to "an assessment, a reassessment or an additional assessment" shall be read as a reference to "an assessment, a reassessment, an additional assessment, a determination or a redetermination". R.S.C. 1985, c. 7 (2nd Supp.), s. 34; S.C. 1993, c. 27, s. 2.

68.21 (1) **Definitions.**—In this section,

- "arm's length sale".—"arm's length sale" means a sale of goods by a licensed manufacturer to a person with whom the manufacturer is dealing at arm's length at the time of the sale;
- "fiscal period".—"fiscal period" means a fiscal period as determined for the purposes of the *Income Tax Act*.
- (2) Payment where bad debt.—Where ad valorem tax under Part III or VI has been paid by a licensed manufacturer in respect of an arm's length sale occurring on or after February 16, 1984 and the manufacturer has established, in accordance with generally accepted accounting practices, that any debt owing to him in respect of the sale has become in whole or in part a bad debt and has accordingly written off the debt as a bad debt in his books of account, an amount equal to the proportion of the amount of that tax that the amount of the debt written off is of the price for which the goods were sold shall, subject to this Part, be paid to that manufacturer if he applies therefor in the two years after the end of his fiscal period during which the debt was so written off.
- (3) **Recovery of payment.**—Where a licensed manufacturer recovers all or any part of a debt in respect of which an amount is paid to him pursuant to subsection (2), in this subsection referred to as the "refunded amount", that manufacturer shall forthwith pay to Her Majesty an amount equal to the proportion of the refunded amount that the amount of the debt so recovered is of the amount of the debt written off in respect of which the refunded amount was paid. R.S.C. 1985, c. 7 (2nd Supp.), s. 34; R.S.C. 1985, c. 12 (4th Supp.), s. 25.

^{*}Refund under s. 68.2 not available for goods sold after 1990. See subsec. 70.1(4).

- **68.22 Payment where warranty.**—Where tax under Part III or VI has been paid in respect of any goods that a licensed manufacturer gives away as free replacement parts under a written warranty given in respect of the goods into which the parts are to be incorporated and the amount, if any, charged for the warranty is included in the sale price charged by the licensed manufacturer for the goods into which the parts are to be incorporated or, if those goods are imported goods, in the duty paid value thereof, an amount equal to the amount of that tax shall, subject to this Part, be paid to that manufacturer if he applies therefor within two years after he gave away the goods. R.S.C. 1985, c. 7 (2nd Supp.), s. 34.
 - **68.23** (1) **Definition of "system goods".—**In this section, "system goods" means
 - (a) goods purchased for use directly in a water distribution, sewerage or drainage system, and
 - (b) goods used in the construction of a building, or that part of a building, used exclusively to house machinery and apparatus for use directly in a water distribution, sewerage or drainage system,

but does not include chemicals purchased for use or used in the treatment of water or sewage in any such system.

- (2) Payment where use in certain systems*.—Where tax under Part VI has been paid in respect of any system goods and the purchaser of the goods has, within three years after the completion of the system for which the goods were purchased or in which the goods were used, as the case may be, transferred the system without charge to a municipality pursuant to a bylaw of or an agreement with that municipality, an amount equal to the amount of that tax shall, subject to this Part, be paid to that purchaser if he applies therefor within two years after that transfer of the system.
- (3) **Declaration.**—For the purposes of subsection (2), the Minister may declare any agency operating a water distribution, sewerage or drainage system for or on behalf of a municipality to be a municipality. R.S.C. 1985, c. 7 (2nd Supp.), s. 34.
 - 68.24 (1) Definitions.—In this section,
- "certified institution".—"certified institution" means a non-profit organization or charity that holds a valid and subsisting certificate issued under subsection (2);
- "charity".—"charity" has the meaning assigned by paragraph 149.1(1)(d) of the *Income Tax Act*;
- "Minister".—"Minister" means the Minister of National Health and Welfare;
- "non-profit organization".—"non-profit organization" has the meaning assigned by paragraph 149(1)(1) of the *Income Tax Act*;
- "prescribed".—"prescribed" means prescribed by the Minister;
- "previously certified institution".—"previously certified institution" means a non-profit organization or charity that holds a valid and subsisting certificate issued under this section, as it read immediately before February 11, 1988;
- "specified day".—"specified day" means
 - (a) in relation to a certified institution, the later of
 - (i) the day specified in the certificate pursuant to subsection (3), and
 - (ii) the first day of April preceding the day on which the application for the certificate was received by the Minister, and

^{*}Refunds under s. 68.23 are restricted by subsec. 70.1(6).

- (b) in relation to a previously certified institution, the later of
 - (i) the day specified in the certificate pursuant to this section, as it read immediately before February 11, 1988, and
 - (ii) the first day of April preceding the day on which the application for the certificate was received by the Minister.
- (2) **Issue of certificate.**—On application in the prescribed form and manner and containing the prescribed information, the Minister may issue a certificate to the applicant for the purposes of this section, if the Minister is satisfied that the applicant is a non-profit organization or charity
 - (a) whose principal purpose is to provide care, of such type as the Governor in Council may prescribe by regulation on the recommendation of the Minister and the Minister of Finance,
 - (i) to children, or to aged, infirm or incapacitated persons, who are in need of care on a continuous or regular basis; and
 - (ii) on its own premises by means of qualified persons in sufficient numbers in relation to the type of care provided; or
 - (b) whose only purpose is to provide administrative services solely to one or more non-profit organizations or charities having the principal purpose described in paragraph (a) and holding a certificate under this subsection.
- (3) **Terms of certificate.**—A certificate under subsection (2) shall be in the prescribed form and
 - (a) shall certify that, as of a day specified in the certificate, the non-profit organization or charity to which it is issued meets the conditions referred to in that subsection; and
 - (b) if the non-profit organization or charity carries on operations at more than one location, shall specify the location for which it is issued.
- (4) **Revocation of new certificate.**—Where the Minister believes on reasonable grounds that the holder of a certificate under subsection (2) did not meet the conditions referred to in that subsection at the time it was issued or has since ceased to meet those conditions, the Minister may, by notice sent to the holder, revoke the certificate effective as of any day on or after the day on which the certificate was issued to the holder or the holder ceased to meet those conditions, as the case may be.
- (5) **Revocation of old certificate.**—Where the Minister believes on reasonable grounds that the holder of a certificate under this section, as it read immediately before February 11, 1988, does not meet the conditions referred to in subsection (2), the Minister may, by notice sent to the holder, revoke the certificate effective as of any day on or after which the holder did not meet those conditions.
- (6) Payment where use by certified or previously certified institutions*. Where tax under Part VI has been paid in respect of any goods and a certified institution or previously certified institution has purchased the goods on or after the specified day for the sole use of the institution and not for resale and met the conditions referred to in subsection (2) at the time of the purchase, an amount equal to the amount of that tax shall, subject to this Part, be paid to that institution if it applies therefor within two years after it purchased the goods.

^{*}Refund under 68.24 restricted after 1990. See subsec. 70.1(7). See also section 230.2.

- (7) Payment where use by certified or previously certified institutions prior to certification*.—Where tax under Part VI has been paid in respect of any goods and a non-profit organization or charity to which a certificate was subsequently issued under subsection (2) or this section, as it read immediately before February 11, 1988, or a person acting on behalf of such an organization or charity, has purchased the goods within two years before the specified day for the sole use of the organization or charity and not for resale and the organization or charity was constructing a building for its own use at the time of the purchase, an amount equal to the amount of that tax shall, subject to this Part, be paid to that organization or charity if it applies therefor within two years after the day on which the certificate was issued to the organization or charity.
- (8) **Exception.**—Where a certificate under subsection (2) specifies a location for which it is issued or a certificate issued under this section, as it read immediately before February 11, 1988, specifies an address of the holder of the certificate, no amount shall be paid pursuant to subsection (6) or (7) to the certified institution or previously certified institution unless the goods were purchased for the sole use of that institution at that location or address and not for resale. R.S.C. 1985, c. 7 (2nd Supp.), s. 34; R.S.C. 1985, c. 12 (4th Supp.), ss. 26, 27.
- **68.25** Payment where use by hospital cleaning establishments**.—Where tax under Part VI has been paid in respect of any goods and the goods have been purchased for the sole purpose of constructing, equipping or operating an establishment
 - (a) that is wholly owned, directly or indirectly, by or on behalf of one or more *bona fide* public hospitals each of which has been certified as such by the Department of National Health and Welfare, and
 - (b) that is established for the sole purpose of providing laundry services, cleaning services or linen supply services to one or more hospitals described in paragraph (a),

an amount equal to the amount of that tax shall, subject to this Part, be paid to that establishment if it applies therefor within two years after the goods were purchased. R.S.C. 1985, c. 7 (2nd Supp.), s. 34.

- **68.26 Payment where use by educational institutions**.**—Where tax under Part VI has been paid in respect of any materials and the materials have been purchased by or on behalf of
 - (a) a school, university or other similar educational institution for use exclusively in the construction of a building for that institution,
 - (b) any organization for use exclusively in the construction of a building for that organization that is to be used exclusively or mainly as a public library operated by or on behalf of that organization on a non-commercial basis, or
 - (c) a corporation wholly owned and controlled by Her Majesty in right of a province that is established for the sole purpose of providing residences for students of universities or other similar educational institutions, for use exclusively in the construction of those residences,

an amount equal to the amount of that tax shall, subject to this Part, be paid to that institution, organization or corporation if it applies therefor within two years after the materials were purchased. R.S.C. 1985, c. 7 (2nd Supp.), s. 34.

^{*}Refund under 68.24 restricted after 1990. See subsec. 70.1(7). See also section 230.2.

^{**}Refunds under sections 68.25 to 68.27 restricted after 1990. See subsec. 70.1(7).

- **68.27** (1) **Definition of "incinerator goods".**—In this section, "incinerator goods" means
 - (a) materials for use exclusively in the construction of, or
 - (b) machinery or apparatus, including equipment to be installed in a chimney or smoke stack, and repair and replacement parts therefor, for use directly and exclusively in the operation of

an incinerator owned or to be owned by a municipality and used or to be used primarily for the incineration of waste for the municipality, but does not include motor vehicles, attachments therefor or office equipment.

- (2) Payment where use in incinerators*.—Where tax under Part VI has been paid in respect of any incinerator goods and the goods have been purchased by or on behalf of a municipality for the sole use of the municipality and not for resale, an amount equal to the amount of that tax shall, subject to this Part, be paid to that municipality if it applies therefor within two years after that purchase of the goods. R.S.C. 1985, c. 7 (2nd Supp.), s. 34.
- **68.28** (1) **Definition of "qualified goods".**—In this section, "qualified goods" means the goods mentioned in Part XIII of Schedule III, but does not include
 - (a) photocopiers or other office type reproduction equipment for use by persons whose principal business is not printing; and
 - (b) for greater certainty, goods that are expressly excluded or not included in that Part.
- (2) Payment where use by small manufacturer*.—Where tax under Part VI has been paid in respect of any qualified goods and the goods have been purchased or imported by a person of a class prescribed pursuant to subsection (3) for the sole use of that person and not for resale, an amount equal to the amount of that tax shall, subject to this Part, be paid to that person if he applies therefor within two years after that purchase or importation of the goods.
- (3) **Regulations.**—The Governor in Council may, on the joint recommendation of the Minister of Finance and the Minister of National Revenue, make regulations prescribing any class of small manufacturer or producer for the purposes of this section. R.S.C. 1985, c. 7 (2nd Supp.), s. 34.
- **68.29** Payment where tourist literature printed**.—Where tax under Part VI has been paid in respect of any printed matter that has been produced or purchased in Canada by a board of trade, chamber of commerce, municipal or automobile association or other similar organization, or by or on the order of a government, or a department, agency or representative of a government, and that is made available to the general public without charge for the promotion of tourism, an amount equal to the amount of that tax shall, subject to this Part, be paid to the organization, or to the government, department, agency or representative, if it applies therefor within two years after the printed matter was so produced or purchased. R.S.C. 1985, c. 7 (2nd Supp.), s. 34; R.S.C. 1985, c. 42 (2nd Supp.), s. 7.
- **68.3** (1) Payment where motor fuel purchased by diplomats**.—Where taxes under Parts III and VI have been paid in respect of gasoline or diesel fuel purchased by a diplomat for his personal or official use, an amount equal to the amount of the taxes shall, subject to this Part, be paid to the diplomat, if the diplomat applies therefor within two years after the purchase of the gasoline or diesel fuel.

^{*}Refunds under sections 68.25 to 68.27 restricted after 1990. See subsec. 70.1(7).

^{**}Refunds under sections 68.28, 68.29 and 68.3 restricted after 1990. See section 70.1(8).

- (2) **Designation order.**—The Governor in Council, on the recommendation of the Secretary of State for External Affairs certifying that Canadian diplomats posted in a foreign country are granted relief from tax on gasoline or diesel fuel, may, by order, designate the foreign country for the purposes of this section.
- (3) **Definition of "diplomat".**—In this section, "diplomat" means a person referred to in section 2 of Part II of Schedule III who represents a country designated by an order made under subsection (2). R.S.C. 1985, c. 42 (2nd Supp.), s. 8.
 - **68.4 Definitions:.**—(1) In this section,
- "aviation fuel".—"aviation fuel" does not include aviation gasoline;
- "carrier".—"carrier" in a calendar year means a person whose gross revenue for the year is derived primarily from the business of providing eligible transportation services and who is not exempt for any period in the year from taxation under Part I of the *Income Tax Act* by reason of section 149 of that Act;
- "eligible transportation services".—"eligible transportation services" means the carriage of passengers or goods or both, by aircraft, boat, bus, truck or train, or a combination thereof;
- "fuel".—"fuel" means diesel fuel and aviation fuel in respect of which the tax under Part III has been paid and cannot be recovered under any other section of this Act;
- "fuel tax rebate".-- "fuel tax rebate" means an amount payable under subsection (2) or (3);
- "gross revenue".—"gross revenue" for a calendar year of a person means
 - (a) where the person is a taxpayer within the meaning of the *Income Tax Act*, the gross revenue of the person under that Act for all taxation years of the person ending in the year, and
 - (b) in any other case, the amount that, for the purposes of that Act, would be the gross revenue of the person for all taxation years of the person ending in the year if the person were a corporation;
- "taxation year".—"taxation year" of a person means
 - (a) where the person is a taxpayer within the meaning of the *Income Tax Act*, the taxation year of the person for the purposes of that Act;
 - (b) in any other case, the period that would be the taxation year of the person for the purposes of that Act, if the person were a corporation;
- "trucker".—"trucker" in a calendar year means a person whose gross revenue for the year is derived primarily from the business of providing carriage of goods by truck and who is not exempt for any period in the year from taxation under Part I of the *Income Tax Act* by reason of section 149 of the Act.
 - (2) Fuel tax rebate for carriers.—Where a person who is a carrier in a calendar year
 - (a) has, in the year, purchased in Canada or imported fuel for use by the carrier solely in the provision of eligible transportation services,
 - (b) applies before July 1993 to the Minister in prescribed form containing prescribed information for a fuel tax rebate in respect of that fuel, and
 - (c) has not applied under subsection (3) for a fuel tax rebate in respect of any fuel purchased or imported in the year,
- a fuel tax rebate equal to three cents for each litre of the fuel shall, subject to this Part, be paid to the carrier.

- (3) Alternative rebate for truckers.—Where a person who is a trucker in a calendar year
- (a) has, in the year, purchased in Canada or imported fuel for use by the trucker solely in the provision of eligible transportation services,
- (b) applies before July 1993 to the Minister in prescribed form containing prescribed information for a fuel tax rebate in respect of that fuel, and
- (c) has not applied under subsection (2) for a fuel tax rebate in respect of any fuel purchased or imported in the year

a fuel tax rebate equal to the lessor of am amount equal to one-half cents for each litre of the fuel and \$500 shall be paid to the trucker.

- (4) **Limitation on rebates.**—No fuel tax rebate shall be paid under subsection (2) or (3)
- (a) in respect of fuel that is used or to be used other than for commercial purposes;
- (b) in respect of fuel that is purchased or imported by the carrier or trucker, as the case may be, before 1991 or after 1992; or
- (c) to a person who is or has been bankrupt or to the trustee in bankruptcy of the person in respect of any fuel that was purchased or imported by the person or the trustee before the person is discharged from the bankruptcy.
- (5) **Idem.**—Not more than one application for a fuel tax rebate in respect of fuel purchased or imported in a calendar year may be made by any person.
- (6) **Diverting fuel to other purposes.**—Where a fuel tax rebate is paid to a person under this section in respect of fuel and the person sells any of the fuel to a purchaser or uses any of the fuel for a purpose other than the provision of eligible transportation services for commercial purposes, the amount of the rebate paid in respect of the fuel so sold or used shall be deemed to be a tax under this Act payable by the person
 - (a) at the time that the fuel is delivered to the purchaser, if it is sold to a purchaser;
 - (b) at the time of the use, if the fuel is used by the person for a purpose other than the provision of eligible transportation services for commercial purposes.
- (7) **Repayment of rebate.**—Subject to subsections (8) and (9), a person to whom a fuel tax rebate was paid under subsection (2) in a taxation year of the person may repay to the Receiver General all or a part of the rebate.
- (8) **Time for repayment.**—A repayment under subsection (7) in respect of a fuel tax rebate paid under subsection (2) to a person in a taxation year of the person shall be made on or before the day that is 90 days after the day on which the Minister sends to the person a notice of assessment of tax payable by the person under Part I of the *Income Tax Act* for the year, a notice of determination under subsection 152(1.1) of that Act in respect of the person for the year or a notification that no tax is payable by the person under that Part for the year.
- (9) **Application of subsections 79(1) to (1.2).** Where a person repays under subsection (7) all or a part of a fuel tax rebate, subsections 79(1) to (1.2) apply, with such modifications as the circumstances require, as if
 - (a) the repayment were a payment of tax payable under Part III;
 - (b) the person had defaulted in paying the tax within the time prescribed by subsection 78(4);
 - (c) subsection 78(4) had required the tax to be paid on or before the last day of the month in which the person received the fuel tax rebate; and
 - (d) the reference in paragraph 79(1)(a) to "a penalty of one-half of one per cent and

interest at the prescribed rate" were read as a reference to "a penalty equal to the prescribed rate of interest". S.C. 1992, c. 29, s. 1.

- 69. (1) Definitions.—In this section,
- "in bulk".—"in bulk", in respect of a sale of gasoline or diesel fuel, means
 - (a) in a quantity of five hundred litres or more, where the gasoline or diesel fuel is delivered to the purchaser at a retail outlet of the vendor, and
 - (b) in any quantity, in any other case;
- "logging".—"logging" means the felling, limbing, bucking and marking of trees, construction of logging roads, off-highway transportation of logs to a mill-pond or mill yard, log salvaging and reforestation, but does not include any production activity on logs after transportation to a mill-pond or mill yard;

"mineral resource".—"mineral resource" means

- (a) a base or precious metal deposit,
- (b) a coal deposit, or
- (c) a mineral deposit in respect of which
 - (i) the Minister of Energy, Mines and Resources has certified that the principal mineral extracted is an industrial mineral contained in a non-bedded deposit,
 - (ii) the principal mineral extracted is sylvite, halite or gypsum, or
 - (iii) the principal mineral extracted is silica that is extracted from sandstone or quartzite;
- "mining".—"mining" means the extracting of minerals from a mineral resource, the processing of ore, other than iron ore, from a mineral resource to the prime metal stage or its equivalent, the processing of iron ore from a mineral resource to the pellet stage or its equivalent and the restoration of strip-mined land to a usable condition, but does not include activities related to the exploration for or development of a mineral resource;
- "qualified".—"qualified", in respect of a farmer, fisherman, hunter, trapper or other person, means a farmer, fisherman, hunter, trapper or person who holds a sales tax bulk permit issued under regulations made pursuant to subsection (10);
- "registered vendor".—"registered vendor" means a person who is registered under regulations made pursuant to subsection (10).
- (2) **Fuel tax rebate to vendor.**—Where gasoline or diesel fuel has been sold by a licensed manufacturer or licensed wholesaler to
 - (a) [Repealed.]
 - (b) a qualified fisherman for commercial fishing,
 - (c) a qualified hunter for commercial hunting,
 - (d) a qualified trapper for commercial trapping,
 - (e) a qualified person for use in logging, or
 - (f) a qualified person for use in mining,

for the sole use of the purchaser and not for resale and the taxes imposed by Parts III and VI are payable in respect of the sale, the manufacturer or wholesaler may, in such circumstances and on such terms and conditions as the Minister may prescribe, deduct, within two years after the sale, a fuel tax rebate in an amount calculated in accordance with subsections (8) and (8.01)

from the amount of any payment of any tax, penalty, interest or other sum that the manufacturer or wholesaler is liable or is about to become liable to make under those Parts or under this Part in respect of taxes under those Parts.

- (2.1) Fuel tax rebate to vendor selling to farmer.—Where gasoline or diesel fuel has been sold by a licensed manufacturer or licensed wholesaler to a qualified farmer for farming purposes, for the sole use of the qualified farmer and not for resale and the tax imposed by Parts III and VI is payable in respect of the sale, the manufacturer or wholesaler may, in such circumstances and on such terms and conditions as the Minister may prescribe, deduct, within two years after the sale, a fuel tax rebate in an amount calculated in accordance with subsections (8.1) and (8.2) from the amount of any payment of any tax, penalty, interest or other sum that the manufacturer or wholesaler is liable or is about to become liable to make under those Parts or under this Part in respect of tax under those Parts.
- (3) **Condition.**—No deduction shall be made by a licensed manufacturer or licensed wholesaler under subsection (2) or (2.1) unless the manufacturer or wholesaler has reduced the amount charged for the gasoline or diesel fuel to the purchaser by an amount equal to the amount of the deduction and the amount of the reduction is shown separately on an invoice for the sale given to the purchaser by the manufacturer or wholesaler.
- (4) Fuel tax rebate to registered vendor.—Where gasoline or diesel fuel has been sold in bulk by a registered vendor to
 - (a) [Repealed.]
 - (b) a qualified fisherman for commercial fishing,
 - (c) a qualified hunter for commercial hunting,
 - (d) a qualified trapper for commercial trapping,
 - (e) a qualified person for use in logging, or
 - (f) a qualified person for use in mining,

for the sole use of the purchaser and not for resale and the taxes imposed by Parts III and VI have been paid or are payable in respect of the gasoline or fuel, a fuel tax rebate in an amount calculated in accordance with subsections (8) and (8.01) shall, subject to this Part, be paid to that registered vendor if he applies therefor within two years after he sold the gasoline or fuel.

- (4.1) Fuel tax rebate to registered vendor selling to farmer.—Where gasoline or diesel fuel has been sold in bulk by a registered vendor to a qualified farmer for farming purposes, for the sole use of the qualified farmer and not for resale and the tax imposed by Parts III and VI has been paid or is payable in respect of the gasoline or fuel, a fuel tax rebate in an amount calculated in accordance with subsections (8.1) and (8.2) shall, subject to this Part, be paid to that registered vendor if he applies therefor within two years after the sale of the gasoline or fuel.
- (5) **Condition.**—No fuel tax rebate shall be paid to a registered vendor under subsection (4) or (4.1) unless the registered vendor has reduced the amount charged for the gasoline or diesel fuel to the purchaser by an amount equal to the amount of the fuel tax rebate applied for and the amount of the reduction is shown separately on an invoice for the sale given to the purchaser by the registered vendor.
- (6) **Fuel tax rebate to purchaser or importer.**—Where gasoline or diesel fuel has been sold to or imported by
- (a) [Repealed.]
 - (b) a fisherman for commercial fishing,

- (c) a hunter for commercial hunting,
- (d) a trapper for commercial trapping,
- (e) a person for use in logging, or
- (f) a person for use in mining,

for the sole use of the purchaser or importer and not for resale and the taxes imposed by Parts III and VI have been paid or are payable in respect of the gasoline or fuel and, in the case of a sale, the amount charged therefor has not been reduced in accordance with subsection (3) or (5), a fuel tax rebate in an amount calculated in accordance with subsections (8) and (8.01) shall, subject to this Part, be paid to that purchaser or importer if he applies therefor within two years after he purchased or imported the gasoline or fuel.

- (6.1) Fuel tax rebate to farmer.—Where gasoline or diesel fuel has been sold to or imported by a farmer for farming purposes, for the sole use of the farmer for farming purposes and not for resale and the tax imposed by Parts III and VI has been paid or is payable in respect of the gasoline or fuel and, in the case of a sale, the amount charged therefor has not been reduced in accordance with subsection (3) or (5), a fuel tax rebate in an amount calculated in accordance with subsections (8.1) and (8.2) shall, subject to this Part, be paid to that farmer if he applies therefor within two years after the purchaser or importation of the gasoline or fuel.
- (7) Limitation.—Subsections (2), (2.1), (4), (4.1), (6) and (6.1) do not apply in respect of gasoline or diesel fuel
 - (a) that is to be used to propel a vehicle on a public highway;
 - (b) that is to be used other than for a commercial purpose; or
 - (c) that is sold or imported
 - (i) on or after January 1, 1990, in respect of the tax imposed by Part III, or
 - (ii) on or after January 1, 1991, in respect of the tax imposed by Part VI.
- (8) Amount of fuel tax rebate: Part VI.—For the purposes of subsections (2), (4) and (6), the amount of the fuel tax rebate in respect of the tax imposed by Part VI shall be calculated at such rate, not exceeding five cents, per litre of gasoline or diesel fuel sold or imported as the Governor in Council may, on the recommendation of the Minister of Finance, prescribe by order or, if no rate is so prescribed, at the rate of three cents per litre of gasoline or diesel fuel sold or imported.
- (8.01) **Amount of fuel tax rebate: Part III.**—For the purposes of subsections (2), (4) and (6), the amount of the fuel tax rebate in respect of the tax imposed by Part III shall be calculated
 - (a) in the case of gasoline, at the rate of
 - (i) one cent per litre, where the gasoline was sold or imported on or after January 1, 1988 and before April 1, 1988, and
 - (ii) two cents per litre, where the gasoline was sold or imported on or after April 1, 1988 and before January 1, 1990; and
 - (b) in the case of diesel fuel, at the rate of one cent per litre, where the diesel fuel was sold or imported on or after January 1, 1988 and before January 1, 1990.
- (8.1) Farmers' rate: Part VI.—For the purposes of subsections (2.1), (4.1) and (6.1), the amount of the fuel tax rebate in respect of the tax imposed by Part VI shall be calculated at such rate, not exceeding five cents, per litre of gasoline or diesel fuel sold or imported as the Governor in Council may, on the recommendation of the Minister of Finance, prescribe by

order or, if no rate is so prescribed, at the rate of three and one-half cents per litre of gasoline or diesel fuel sold or imported.

- (8.2) Farmers' rate: Part III.—For the purposes of subsections (2.1), (4.1) and (6.1), the amount of the fuel tax rebate in respect of the tax imposed by Part III shall be calculated
 - (a) in the case of gasoline, at the rate of
 - (i) three cents per litre, where the gasoline was sold or imported on or after January 1, 1987 and before January 1, 1988,
 - (ii) four cents per litre, where the gasoline was sold or imported on or after January 1, 1988 and before April 1, 1988, and
 - (iii) five cents per litre, where the gasoline was sold or imported on or after April 1, 1988 and before January 1, 1990; and
 - (b) in the case of diesel fuel, at the rate of
 - (i) three cents per litre, where the diesel fuel was sold or imported on or after January 1, 1987 and before January 1, 1988, and
 - (ii) four cents per litre, where the diesel fuel was sold or imported on or after January 1, 1988 and before January 1, 1990.
- (9) **Diversion.**—Where the amount charged for gasoline or diesel fuel to a purchaser is reduced in accordance with subsection (3) or (5) or a payment is made under subsection (6) or (6.1) to a purchaser or importer of gasoline or diesel fuel and that person sells the gasoline or fuel or uses it for a purpose for which the reduction or payment could not, at the time of the purchase or importation, have been made, the amount of the reduction or payment shall be deemed to be a tax under this Act payable by that person,
 - (a) where that person sells the gasoline or fuel, at the time of delivery thereof to the purchaser from him; and
 - (b) where that person uses the gasoline or fuel, at the time of the use.
 - (10) **Regulations.**—The Governor in Council may make regulations
 - (a) authorizing the issue of sales tax bulk permits to farmers, fishermen, hunters, trappers or other persons who use gasoline or diesel fuel for a purpose described in subsection (2) or (2.1) and prescribing the terms and conditions of the permits;
 - (b) prescribing the records to be maintained and returns to be filed by farmers, fishermen, hunters, trappers or other persons holding sales tax bulk permits;
 - (c) prescribing the times at which returns referred to in paragraph (b) are to be filed;
 - (d) authorizing the cancellation of any sales tax bulk permit where any term or condition of that permit is not complied with or where any provision of this Act or the regulations applicable to the person holding the permit is not complied with; and
 - (e) providing for a system of registration by the Minister of persons who regularly sell in bulk gasoline or diesel fuel to qualified farmers, qualified fishermen, qualified hunters, qualified trappers or qualified persons engaged in logging or mining, including, without limiting the generality of the foregoing,
 - (i) the form and manner of applying for, and the procedure for granting, registration,
 - (ii) the terms and conditions on which registration may be granted, and
 - (iii) the authorization of the Minister to cancel any registration where any term or condition of the registration is not complied with or where any provision of this Act or

the regulations applicable to the registered vendor is not complied with. R.S.C. 1985, c. 7 (2nd Supp.), ss. 24, 34; R.S.C. 1985, c. 42 (2nd Supp.), s. 9; R.S.C. 1985, c. 42 (3rd Supp.), s. 1; R.S.C. 1985, c. 12 (4th Supp.), s. 28; S.C. 1989, c. 22, s. 4.

- **70.** (1) **Drawback on certain goods*.**—Subject to subsection (5), on application, the Minister may, under regulations of the Governor in Council, grant a drawback of the taxes imposed by Part III, IV, V or VI and paid on or in respect of
 - (a) goods exported from Canada;
 - (b) goods supplied as ships' stores;
 - (c) goods used for the equipment, repair or reconstruction of ships or aircraft; or
 - (d) goods delivered to telegraph cable ships proceeding on an ocean voyage for use in laying or repairing oceanic telegraph cables outside Canadian territorial waters.
- (2) **Specific sum.**—The Minister may, under regulations of the Governor in Council, pay a specific sum in lieu of a drawback under subsection (1) in any case where a specific sum in lieu of a drawback of customs duties is granted under section 86 of the *Customs Act*.
- (2.1) **Drawback on imported goods.**—On application, the Minister may, under section 82 of the *Customs Act*, grant a drawback of the taxes imposed by Parts III, IV and VI and paid on or in respect of goods imported into Canada.
- (3) **Application for drawback.**—An application for a drawback under this section shall be made in the prescribed form and contain the prescribed information and shall be filed with the Minister within such time and in such manner as the Governor in Council may, by regulation, prescribe.
- (4) **Evidence.**—No drawback shall be granted under this section unless the person applying therefor provides such evidence in support of the application as the Minister may require.
- (5) Exception to drawback.—No drawback of the taxes imposed under Part III shall be granted under this section in respect of tobacco products mentioned in Schedule II. R.S.C. 1985, c. 7 (2nd Supp.), ss. 25, 34, 75; S.C. 1991, c. 42, s. 4; S.C. 1993, c. 25, s. 62.
 - 70.1 (1) Definitions.—In this section,
- "adjustment".—"adjustment" to the sale price of goods means the giving of a discount, allowance, rebate or other amount as a reduction in the sale price;
- "other enactment".—"other enactment" means
 - (a) a provision of an Act of Parliament, other than this Act, enacted before 1991, or
- (b) a provision of a regulation or order enacted under an Act of Parliament before 1991; "refund".—"refund" of tax means
 - (a) a refund of that tax, or other payment calculated with reference to that tax, provided for under any of sections 68, 68.1, 68.17, 68.19, 68.2 or 68.23 to 68.3,
 - (b) a drawback of that tax, or payment in lieu of a drawback of that tax, provided for under section 70, or
 - (c) a refund, rebate, drawback or remission of that tax, or other payment in respect of or calculated with reference to that tax, provided for under any other enactment;
- "registrant".—"registrant" has the meaning assigned by subsection 123(1);

^{*}Drawbacks under s. 70 restricted after 1990, See subsecs, 70.1(4) and (8).

"tax".—"tax" means tax imposed by Part VI.

- (2) **Adjustments after 1990.**—A refund of tax shall not be paid to a person (in this subsection referred to as the "vendor") in respect of an adjustment made after 1990 to the sale price of goods sold by the vendor to a purchaser unless
 - (a) the vendor sold the goods to the purchaser under an agreement in writing, paid tax in respect of the sale of the goods, calculated on the sale price, and granted the adjustment within two years after the day on or before which the vendor was required to pay the tax under section 78; and
 - (b) the adjustment is provided for in the agreement and the making of the adjustment is not dependent on the performance of any service or other act by the purchaser.
- (3) **Exports after 1990.**—A refund of tax provided for under section 68.1 or 70 or any other enactment in respect of goods exported from Canada shall not be paid to a person in respect of goods exported by the person after 1990 unless
 - (a) the person had possession of the goods in Canada at the end of 1990 and was not a registrant on January 1, 1991; or
 - (b) the person imported the goods, had possession of the goods in Canada at the end of 1990 and was not entitled to be paid a rebate in respect of the goods under section 120, and the goods suffered damage or deterioration at any time before the goods were released, were of inferior quality to those in respect of which the person paid tax, were defective or were not the goods ordered by the person.
- (4) Goods sold after 1990.—A refund of tax provided for under section 68.17, 68.2 or 70 or any other enactment in respect of goods sold or otherwise supplied or transferred by a person to a purchaser or other transferee shall not be paid to the person unless the person transferred ownership or possession of the goods to the purchaser or other transferee of the goods before 1991.
- (5) Goods for use by a province.—A refund of tax shall not be paid under section 68.19 in respect of goods supplied, transferred or delivered to, or purchased by, Her Majesty in right of a province unless
 - (a) Her Majesty in that right acquired ownership or possession of the goods before 1991; or
 - (b) the goods were supplied or transferred to Her Majesty in that right by a person in the course of performing services under an agreement in writing with Her Majesty in that right and the person had possession of the goods in Canada at the end of 1990 and was not entitled to be paid a rebate in respect of the goods under section 120.
- (6) System goods acquired after 1990.—A refund of tax shall not be paid under section 68.23 to a person in respect of system goods unless the person acquired ownership or possession of the goods before 1991 and was not entitled to be paid a rebate in respect of the goods under section 120.
- (7) Goods acquired by certain organizations after 1990.—A refund of tax shall not be paid under any of sections 68.24 to 68.27 to a person (in this subsection referred to as the "organization") unless
 - (a) in the case of goods purchased by the organization, the organization acquired ownership or possession of the goods before 1991; or
 - (b) in the case of goods acquired or used by another person for a purpose for which a refund of tax to the organization is provided for under that section, the other person

acquired ownership or possession of the goods before 1991 and was not entitled to be paid a rebate in respect of the goods under section 120.

- (8) Other goods acquired after 1990.—A refund of tax in respect of goods purchased or otherwise acquired by a person shall not be paid under any of sections 68.28 to 68.3 or 70 or any other enactment to the person unless the person acquired ownership or possession of the goods before 1991. S.C. 1993, c. 27, s. 3.
- 71. Statutory recovery rights only.—Except as provided in this or any other Act of Parliament, no person has a right of action against Her Majesty for the recovery of any moneys paid to Her Majesty that are taken into account by Her Majesty as taxes, penalties, interest or other sums under this Act. R.S.C. 1985, c. 7 (2nd Supp.), ss. 26, 34.
- 72. (1) **Definition of "application"*.**—In this section, "application" means an application under any of sections 68 to 69.
- (2) **Form and contents of application.**—An application, other than an application under any of sections 68.161 to 68.169, shall be made in the prescribed form and contain the prescribed information.
- (3) **Filing of application.**—An application, other than an application under any of sections 68.161 to 68.169, shall be filed with the Minister in any manner that the Governor in Council may, by regulation, prescribe.
- (4) **Determination.**—On receipt of an application, the Minister shall, with all due dispatch, consider the application and determine the amount, if any, payable to the applicant.
- (5) **Minister not bound.**—In considering an application, the Minister is not bound by any application or information supplied by or on behalf of any person.
 - (6) Notice and payment.—After considering an application, the Minister shall
 - (a) send to the applicant a notice of determination in the prescribed form setting out
 - (i) the date of the determination.
 - (ii) the amount, if any, payable to the applicant,
 - (iii) a brief explanation of the determination, where the Minister rejects the application in whole or in part, and
 - (iv) the period within which an objection to the determination may be made under section 81.17; and
 - (b) pay to the applicant the amount, if any, payable to him.
- (7) **Interest on payment.**—Where an amount is paid to an applicant under subsection (6), interest at the prescribed rate shall be paid
 - (a) in the case of an application made under section 68.162, 68.163 or 68.164, in respect of each day between the day on which the application was received by the Minister and the day on which the payment is sent, and compounded monthly on the total amount of the payment and interest outstanding; and
 - (b) in any other case, in respect of each day between the day that is sixty days after the day on which the application was received by the Minister and the day on which the payment is sent, and compounded monthly on the total amount of the payment and interest outstanding.

^{*}The provisions of section 72 apply to FST inventory rebate and new housing rebate claims. See subsections 120(6) and 121(6).

- (8) **Minimum interest.**—No interest of less than one dollar is payable pursuant to subsection (7).
- (9) **Determination valid and binding.**—A determination under subsection (4), including a determination varied under section 81.17, subject to being varied or vacated on an objection or appeal under this Part and subject to an assessment, shall be deemed to be valid and binding notwithstanding any irregularity, informality, error, defect or omission therein or in any proceeding under this Act relating thereto.
- (10) **Irregularities.**—No determination under subsection (4) shall be varied or vacated on an appeal by reason only of an irregularity, informality, error, defect or omission by any person in the observance of any directory provision of this Act. R.S.C. 1985, c. 7 (2nd Supp.), ss. 27, 34; S.C. 1994, c. 29, s. 8.
- 73. (1) Deductions of tax, other than Part I tax, where no application.—Any person authorized pursuant to subsection (4) who files a return under section 20, 21.32 or 78 and to whom an amount would be payable under any of sections 68 to 68.153 or 68.17 to 69 if that person duly applied therefor on the day on which he files the return, in lieu of applying for that amount, may in that return report that amount and deduct it or any part thereof from the amount of any payment or remittance of tax, penalty, interest or other sum that is reported in that return.
- (2) **Deductions of Part I tax.**—Any person who makes a return under subsection 5(1) and to whom an amount would be payable under section 68 if the person duly applied therefor on the day on which that return is made, in lieu of applying for that amount, may in that return report that amount and deduct it or any part thereof from the amount of any payment of tax, penalty, interest or other sum that is reported in that return.
- (3) **Subsequent deductions.**—Where a person reports an amount in accordance with subsection (1) or (2) and does not deduct the whole amount in the return in which it is reported, the person may, in any subsequent return, report the amount not previously deducted under this section and deduct it or any part thereof from the amount of any payment or remittance of tax, penalty, interest or other sum that is reported in that subsequent return.
 - (4) Authorizations and terms.—The Minister may, in writing,
 - (a) authorize a specified person, a person of a specified class of persons or persons generally to make deductions under subsections (1) and (3) either generally or with respect to any transaction of a specified class of transactions;
 - (b) amend an authorization made pursuant to paragraph (a) or suspend or revoke any such authorization either generally or with respect to a specified person or a person of a specified class of persons; and
 - (c) specify the terms and conditions on which, and the manner in which, deductions may be made under subsection (1), (2) or (3).
 - (5) **Presumption.**—Where a person deducts an amount under this section,
 - (a) the person is deemed to have paid, on the day he filed or made the return in which the amount was deducted, an amount equal to that amount on account of his tax, penalty, interest or other sum payable under this Act in respect of the period for which the return was filed or made; and
 - (b) the Minister is deemed to have paid, on that day, an amount equal to that amount to that person in accordance with section 72. R.S.C. 1985, c. 7 (2nd Supp.), ss. 28, 34; R.S.C. 1985, c. 12 (4th Supp.), s. 29.

- **73.1** [Added R.S.C. 1985, c. 7 (2nd Supp.), s. 29; repealed R.S.C. 1985, c. 7 (2nd Supp.), s. 34.]
- 74. (1) Deductions of tax, other than Part I tax, where application.—In lieu of making a payment, other than a payment in respect of Part I, pursuant to an application under any of sections 68 to 68.153 or 68.17 to 69, the Minister may, on request of the applicant, authorize the applicant to deduct, on such terms and conditions and in such manner as the Minister may specify, the amount that would otherwise be paid to the applicant from the amount of any payment or remittance of tax, penalty, interest or other sum that is reported in a return under section 20, 21.32 or 78 by the applicant.
- (2) **Notification of applicant.**—Where the Minister authorizes an applicant to make a deduction under subsection (1), the Minister shall notify the applicant to that effect in the notice of determination sent to the applicant.
- (3) Interest on deduction.—Where a deduction is authorized under subsection (1), interest at the prescribed rate shall be authorized as a deduction in accordance with that subsection, calculated in respect of each day between the day that is sixty days after the day on which the application for the payment in respect of which the deduction was authorized was received by the Minister and the day on which the notice of determination was sent, and compounded monthly on the total amount of the deduction and interest outstanding.
- (4) **Minimum interest.**—No interest of less than one dollar shall be authorized as a deduction under subsection (3).
 - (5) **Presumption.**—Where an applicant deducts an amount under this section,
 - (a) the applicant is deemed to have paid, on the day he filed the return in which the amount was deducted, an amount equal to that amount on account of his tax, penalty, interest or other sum payable under this Act in respect of the period for which the return was filed; and
 - (b) the Minister is deemed to have paid, on the day the notice of determination is sent to the applicant, an amount equal to that amount to the applicant in accordance with section 72. R.S.C. 1985, c. 7 (2nd Supp.), s. 34; R.S.C. 1985, c. 12 (4th Supp.), s. 30.
- 75. (1) Recovery of deduction from licensee.—Where a licensee makes a deduction under section 73 or 74 in lieu of receiving a payment pursuant to section 68.15, subsection 68.15(3) applies, with such modifications as the circumstances require, with respect to the amount of the deduction as if it were a refunded amount within the meaning of that subsection.
- (2) **Recovery of deduction from licensed manufacturer.**—Where a licensed manufacturer makes a deduction under section 73 or 74 in lieu of receiving a payment pursuant to section 68.21, subsection 68.21(3) applies, with such modifications as the circumstances require, with respect to the amount of the deduction as if it were a refunded amount within the meaning of that subsection. R.S.C. 1985, c. 7 (2nd Supp.), ss. 30, 34.
- **75.1** [Added R.S.C. 1985, c. 15 (1st Supp.), s. 25; amended R.S.C. 1985, c. 7 (2nd Supp.), s. 31; repealed R.S.C. 1985, c. 7 (2nd Supp.), s. 34.]
- **75.2** [Added R.S.C. 1985, c. 15 (1st Supp.), s. 25; amended R.S.C. 1985, c. 7 (2nd Supp.), s. 32; repealed R.S.C. 1985, c. 7 (2nd Supp.), s. 34.]
- **76.** Calculation of payment or deduction.—Where circumstances render it difficult to determine the exact amount of any payment that may be made pursuant to any of sections 68 to 68.29 or any deduction that may be made under section 73 or 74, the Minister, with the consent of the person to whom the payment or by whom the deduction may be made, may in lieu of that amount make a payment pursuant to, or authorize a deduction under, that section in an amount

determined, in such manner as the Governor in Council may by regulation prescribe, to be the exact amount of the payment or deduction. R.S.C. 1985, c. 15 (1st Supp.), s. 25; R.S.C. 1985, c. 7 (2nd Supp.), s. 34.

77. [Amended R.S.C. 1985, c. 15 (1st Supp.), s. 25; R.S.C. 1985, c. 7 (2nd Supp.), s. 33; repealed R.S.C. 1985, c. 7 (2nd Supp.), s. 34.]

Returns and Payment of Tax

- **78.** (1) **Monthly returns.**—Every person who is required to pay tax under Part II.1, III, IV or VI shall make each month
 - (a) in the case of tax under Part II.1, a true return in the prescribed form of all amounts payable by that person on account of tax imposed by that Part for the last preceding month, or
 - (b) in the case of tax under Part III. IV or VI, a true return in the prescribed form of that person's taxable sales for the last preceding month,
- containing such prescribed information as may be required.
- (2) Licence holders.—Every person holding a licence granted under or in respect of Part II.1, III, IV or VI shall, if
 - (a) in the case of tax under Part II.1, no amounts are payable by that person on account of tax imposed by that Part for the last preceding month, or
 - (b) in the case of tax under Part III, IV or VI, no taxable sales have been made during the last preceding month,
- make a return as required by subsection (1) stating that fact.
- (3) Alternate periods for making returns.—Notwithstanding subsections (1) and (2), the Minister may, by regulation,
 - (a) authorize any person to make a return in respect of any accounting period of not less than twenty-one days and not more than thirty-five days;
 - (b) authorize any person to make a return in respect of any period longer than one month but not longer than six months, if the tax payable by that person under Part II.1 or Parts III, IV and VI, as the case may be, for the last preceding calendar year did not exceed four thousand eight hundred dollars; or
 - (c) authorize any person whose taxable services or sales are predominantly limited to a seasonal period of operation to make a return in respect of any period longer than one month but not longer than six months, if the tax payable by that person under Part II.1 or Parts III, IV and VI, as the case may be, for the equivalent period in the last preceding calendar year did not exceed an average of four hundred dollars per month throughout that equivalent period.
- (4) **Date of filing and payment.**—Subject to subsection 79(2) and sections 79.1 and 79.2, the return required by this section shall be filed and the tax payable shall be paid
 - (a) in a case where the return is required to be made in accordance with subsection (1) or (2), not later than the last day of the first month succeeding that in which the taxes became payable or the sales were made, as the case may be;
 - (b) in a case where the return is authorized to be made in accordance with a regulation made under paragraph (3)(a), not later than the last day of the first authorized accounting period following the end of the accounting period to which the return relates; and

- (c) in a case where the return is authorized to be made in accordance with a regulation made under paragraph (3)(b) or (c), not later than the last day of the first month following the end of the period to which the return relates. R.S.C. 1985, c. 15 (1st Supp.), s. 26; R.S.C. 1985, c. 7 (2nd Supp.), s. 35; R.S.C. 1985, c. 12 (4th Supp.), s. 31.
- 79. (1) Penalty and interest on default in paying taxes.—Subject to subsections (1.1) to (3), a person who defaults in paying tax within the time prescribed by subsection 78(4), in addition to the amount in default, shall pay
 - (a) in the case of tax required to be paid not later than the last day of a month, a penalty of one-half of one per cent and interest at the prescribed rate, in respect of each month or fraction of a month between that day and the day on which the total tax, penalty and interest outstanding is paid, calculated on the total tax, penalty and interest outstanding in that month or fraction of a month; and
 - (b) in the case of tax required to be paid not later than the last day of an accounting period, a penalty of one-half of one per cent and interest at the prescribed rate, in respect of each accounting period or fraction of an accounting period between that day and the day on which the total tax, penalty and interest outstanding is paid, calculated on the total tax, penalty and interest outstanding in that accounting period or fraction of an accounting period.
- (1.1) **Minimum penalty and interest.**—No penalty or interest is payable under subsection (1) if the person liable to pay the tax pays all taxes payable by him under Parts II.1, III, IV or VI and, at the time of the payment, the total penalty and interest payable in respect of all such taxes is less than ten dollars.
- (1.2) **Time for paying penalty or interest.**—A person who is liable to pay penalty or interest under subsection (1) shall pay the penalty or interest not later than the last day of the month or accounting period in respect of which the penalty or interest was calculated.
- (2) **Extension.**—The Minister may, before or after the expiration of the time prescribed by subsection 78(4), extend in writing the time for filing a return or paying any tax, and where the Minister so extends the time,
 - (a) the return shall be filed or the tax shall be paid within the time as so extended;
 - (b) interest accrues under subsection (1) in respect of the tax as if the time had not been so extended;
 - (c) no penalty accrues or shall be deemed to have accrued under subsection (1) in respect of the tax before the expiration of the time as so extended; and
 - (d) penalty accrues under subsection (1) in respect of a default in paying the tax or any portion thereof within the time as so extended as if the default were a default referred to in that subsection.
- (3) Security.—Where the Minister holds security under section 80.1 for the payment of any tax that is not paid within the time prescribed by subsection 78(4),
 - (a) interest accrues under subsection (1) in respect of the tax from the expiration of that time; and
 - (b) penalty accrues under subsection (1) only if the total tax, penalty and interest outstanding, as calculated in respect of each month or accounting period or fraction of a month or accounting period during which the default continues, exceeds the value of the security at the time it is accepted by the Minister and, if accruing, the penalty shall be calculated only on the amount of the excess.

- (4) [Repealed] R.S.C. 1985, c. 15 (1st Supp.), s. 26; R.S.C. 1985, c. 7 (2nd Supp.), s. 36; R.S.C. 1985, c. 12 (4th Supp.), s. 32.
 - 79.1 (1) Interpretation.—For the purposes of this section,
 - (a) a person's "instalment base"
 - (i) for a month is the lesser of
 - (A) the tax payable under Part II.1, or Parts III, IV and VI, as the case may be, other than tax payable in accordance with the *Customs Act*, by that person in that month, and
 - (B) the tax so payable in the last preceding month,
 - (ii) for an accounting period is the lesser of
 - (A) the tax payable under Part II.1, or Parts III, IV and VI, as the case may be, other than tax payable in accordance with the *Customs Act*, by that person in that accounting period, and
 - (B) the tax so payable in the last preceding accounting period, and
 - (iii) for any other period to which a return relates is the lesser of
 - (A) the tax payable under Part II.1, or Parts III, IV and VI, as the case may be, other than tax payable in accordance with the *Customs Act*, by that person in that period, and
 - (B) the tax so payable in the last preceding period multiplied by the ratio that the number of days in the period to which the return relates is to the number of days in the last preceding period; and
 - (b) a person is a "large taxpayer" at any particular time if
 - (i) the aggregate amount of taxes payable under Parts II.1, III, IV and VI. other than taxes payable in accordance with the *Customs Act*, and collected or collectible under Parts II and II.2 by that person in the last preceding calendar year ending at least ninety days, or ninety-one days where that time falls in a leap year, before that time exceeded twelve million dollars, or
 - (ii) the person
 - (A) was, at any time in the last preceding calendar year ending at least ninety days, or ninety-one days where that time falls in a leap year, before that time, a member of a group of associated corporations (within the meaning of section 256 of the *Income Tax Act*) and the aggregate amount of taxes payable under Parts II.1, III, IV and VI, other than taxes payable in accordance with the *Customs Act*, and collected or collectible under Parts II and II.2 by the group in that year exceeded twelve million dollars, and
 - (B) is not, at that time, authorized to make a return in accordance with a regulation made under paragraph 78(3)(b) or (c).
- (2) **Instalment payments by large taxpayers.**—A large taxpayer who is required to file a return and pay tax within the time prescribed by subsection 78(4) shall pay instalments on account of the tax in accordance with the following rules:
 - (a) in the case where the return is required to be made in accordance with subsection 78(1), the large taxpayer shall pay two instalments, each equal to one-half of the taxpayer's instalment base for the month in which the tax became payable or the sales

were made, as the case may be, the first to be paid not later than the last day of that month and the second not later than the fifteenth day of the next following month; and

- (b) in the case where the return is authorized to be made in accordance with a regulation made under paragraph 78(3)(a), the large taxpayer shall pay two instalments, each equal to one-half of the taxpayer's instalment base for the accounting period to which the return relates, the first to be paid not later than the last day of that accounting period and the second not later than the fifteenth day of the next following accounting period.
- (3) **Instalment payments by other persons.**—A person, other than a large taxpayer, who is required to file a return and pay within the time prescribed by subsection 78(4) shall pay an instalment on account of the tax in accordance with the following rules:
 - (a) in the case where the return is required to be made in accordance with subsection 78(1), the person shall pay an instalment, equal to the person's instalment base for the month in which the tax became payable or the sales were made, as the case may be, not later than the twenty-first day of the next following month;
 - (b) in the case where the return is authorized to be made in accordance with a regulation made under paragraph 78(3)(a), the person shall pay an instalment, equal to the person's instalment base for the accounting period to which the return relates, not later than the twenty-first day of the next following accounting period; and
 - (c) in the case where the return is authorized to be made in accordance with a regulation made under paragraph 78(3)(b) or (c), the person shall pay an instalment, equal to the person's instalment base for the period to which the return relates, not later than the twenty-first day of the month next following the end of that period.
- (4) Penalty and interest on default by large taxpayer in paying instalment.—Subject to subsections (6) to (8), a large taxpayer who defaults in paying an instalment within the time prescribed by subsection (2) shall, in addition to the amount in default, pay in respect of the period between the end of that time and the end of the time prescribed for payment of the tax on account of which the instalment was payable
 - (a) in the case of an instalment required to be paid not later than the last day of a month or an accounting period, a penalty of one-half of one per cent and interest at the prescribed rate, calculated on the amount by which
 - (i) one-half of the taxpayer's instalment base for that month or accounting period exceeds
 - (ii) the aggregate of all taxes on account of which the instalment was payable that were paid not later than that day; and
 - (b) in the case of an instalment required to be paid not later than the fifteenth day of a month or an accounting period, a penalty of one-quarter of one per cent and interest at one-half of the prescribed rate, calculated on the amount by which
 - (i) one-half of the taxpayer's instalment base for the last preceding month or accounting period

exceeds

- (ii) the amount by which the aggregate of all taxes on account of which the instalment was payable that were paid not later than that day exceeds the lesser of
 - (A) the aggregate of all taxes on account of which the instalment was payable that were paid not later than the last day of the last preceding month or accounting period, and

- (B) one-half of the taxpayer's instalment base for the last preceding month or accounting period.
- (5) **Penalty and interest on default by other persons in paying instalment.**—Subject to subsections (6) to (8), a person who defaults in paying an instalment within the time prescribed by subsection (3) shall, in addition to the amount in default, pay in respect of the period between the end of that time and the end of the time prescribed for payment of the tax on account of which the instalment was payable
 - (a) in the case of an instalment required by paragraph (3)(a) or (b) to be paid not later than the twenty-first day of a month or an accounting period, a penalty of one-sixth of one per cent and interest at one-third of the prescribed rate, calculated on the amount by which
 - (i) the person's instalment base for the last preceding month or accounting period exceeds
 - (ii) the aggregate of all taxes on account of which the instalment was payable that were paid not later than that day; and
 - (b) in the case of an instalment required by paragraph (3)(c) to be paid not later than the twenty-first day of a month next following the end of a period, a penalty of one-sixth of one per cent and interest at one-third of the prescribed rate, calculated on the amount by which
 - (i) the person's instalment base for that period exceeds
 - (ii) the aggregate of all taxes on account of which the instalment was payable that were paid not later than that day.
- (6) **Minimum penalty and interest.**—No penalty or interest is payable under subsection (4) or (5) if the large taxpayer or other person liable to pay the instalment pays all taxes payable by the taxpayer or other person under Parts II.1, III, IV or VI and, at the time of the payment, the total penalty and interest payable in respect of the instalment is less than five dollars and in respect of all those taxes is less than ten dollars.
- (7) **Time for paying penalty or interest.** —A large taxpayer or other person who is liable to pay penalty or interest under subsection (4) or (5) in respect of a default in paying an instalment shall pay the penalty or interest within the time prescribed by subsection 78(4) for the payment of the tax on account of which the instalment is payable.
- (8) **Extension.**—The Minister may, before or after the expiration of the time prescribed by subsection (2) or (3), extend in writing the time for paying an instalment, for any period within the time prescribed by subsection 78(4) for the payment of the tax on account of which the instalment is payable, and where the Minister so extends the time
 - (a) the instalment shall be paid within the time as so extended;
 - (b) interest accrues under subsection (4) or (5), as the case may be, in respect of the instalment as if the time had not been so extended;
 - (c) no penalty accrues or shall be deemed to have accrued under subsection (4) or (5), as the case may be, in respect of the instalment before the expiration of the time as so extended; and
 - (d) penalty accrues under subsection (4) or (5), as the case may be, in respect of a default in paying an instalment within the time as so extended as if the default were a default referred to in that subsection, R.S.C. 1985, c. 12 (4th Supp.), s. 33.

- **79.2** (1) **Filing of returns and payment or remittance of amounts.**—A person who is required by this Act, other than Part I, to file a return or to pay or remit an amount shall file the return with the Minister or pay or remit the amount to the Receiver General at such office of the Department as the Governor in Council may, by regulation, prescribe.
- (2) **Expiration of time on a holiday.**—Where a person is required by this Act, other than Part I, to file a return or to pay or remit an amount not later than a day and that day falls on a day when the office of the Department at which that person is required by the regulations to file the return or pay or remit the amount is normally closed for business, that person shall file the return or pay or remit the amount at that office not later than the day last preceding that day when that office is open for business.
- (3) **Filing of return by mail.**—Where a person who is required by this section to file a return with the Minister does so by mailing the return, the return shall be deemed to have been filed with the Minister on the day on which the return was mailed and the date of the postmark is evidence of that day.
- (4) **Payment or remittance of amounts.**—A person who is required by this section to pay or remit an amount to the Receiver General shall not be considered as having paid or remitted the amount until it is received by the Receiver General. R.S.C. 1985, c. 12 (4th Supp.), s. 33.
- **80.** (1) **Report by licence holders.**—Every person holding a licence in respect of Parts III and IV shall submit to the Minister each year, within six months after the end of that person's fiscal year, a report in the prescribed form containing details of that person's sales, taxes paid under this Act and deductions under subsection 69(2) in the fiscal year and any other prescribed information.
- (2) Alternate reporting.—Any person making a return under paragraph 78(3)(b) or (c) may, in lieu of submitting a report under subsection (1), include in the return a report in the prescribed form containing details of the person's sales, taxes paid under this Act and deductions under subsection 69(2) in the period to which the return relates and any other prescribed information. R.S.C. 1985, c. 15 (1st Supp.), c. 27; R.S.C. 1985, c. 7 (2nd Supp.), s. 37; R.S.C. 1985, c. 12 (4th Supp.), s. 34; S.C. 1990, c. 45, s. 11.

Security

- **80.1** (1) Security generally.—The Minister may, if he considers it advisable in a particular case, accept security for the payment of any tax, penalty, interest or other sum that is or may become payable under this Act.
- (2) **Security on objection or appeal.**—Where a person is making an objection to or appealing from an assessment, the Minister shall accept adequate security furnished by or on behalf of that person for the payment of any tax, penalty, interest or other sum that is in controversy.
- (3) Surrender of security.—Where a person who has furnished security, or on whose behalf security has been furnished, under this section requests in writing that the Minister surrender the security or any part thereof, the Minister shall surrender the security to the extent that the value thereof exceeds the amount, at the time the request is received by the Minister, of any tax, penalty, interest or other sum for the payment of which the security was furnished.
- (4) **Discharge of security.**—The Minister may discharge in writing any security accepted by the Minister pursuant to this section. R.S.C. 1985, c. 7 (2nd Supp.), s. 37.

Obligation of Trustees

- **81.** (1) **Certificate before distribution.**—Every executor, administrator, assignee, liquidator or other like person, other than a trustee in bankruptcy, shall, before distributing any assets under his control in that capacity, obtain a certificate from the Minister certifying that no tax, penalty, interest or other sum under this Act, other than Part I, chargeable against or payable by that person in that capacity or chargeable against or payable in respect of those assets, remains unpaid or that security for the payment thereof has, in accordance with section 80.1, been accepted by the Minister.
- (2) **Personal liability.**—Any person who distributes assets without a certificate as required by subsection (1) is personally liable to pay to Her Majesty an amount equal to the lesser of
 - (a) the value of the assets so distributed, and
 - (b) the amount of any tax, penalty, interest or other sum that remains unpaid and for the payment of which security has not been furnished to the Minister. R.S.C. 1985, c. 15 (1st Supp.), s. 28; R.S.C. 1985, c. 7 (2nd Supp.), s. 38.

Assessments

- **81.1** (1) **Assessment.**—The Minister may, in respect of any matter, assess a person for any tax, penalty, interest or other sum payable by that person under this Act and may, notwithstanding any previous assessment covering, in whole or in part, the same matter, make such additional assessments as the circumstances require.
- (2) **Reassessment.**—The Minister may, in respect of any matter covered by an assessment, vary the assessment or reassess the person assessed.
- (3) **Completion of assessment.**—An assessment shall be completed with all due dispatch and may be performed in such manner and form and by such procedure as the Minister considers appropriate.
- (4) **Minister not bound.**—The Minister is not bound by any return, application or information supplied by or on behalf of any person and may make an assessment, notwithstanding any return, application or information so supplied or that no return, application or information has been supplied.
- (5) **Determination of refunds.** —In making an assessment, the Minister may determine whether an amount is payable to the person being assessed pursuant to any of sections 68 to 68.29.
- (6) **Presumption.**—For the purposes of determining, in making an assessment, whether an amount is payable to the person being assessed pursuant to any of sections 68 to 69.29, the person is deemed to have duly made an application under the section on the day on which the notice of assessment is sent to him.
- (7) **Determination of credits.**—In making an assessment, the Minister may determine whether a credit may be allowed to the person being assessed pursuant to subsections (8) to (10).
- (8) When credit may be allowed. Where an amount would be payable to the person being assessed pursuant to any of sections 68 to 68.29
 - (a) if that person had duly made an application under the section on the day on which the notice of assessment is sent to him, and

- (b) if the reference in the section to "two years" were read as a reference to "four years", a credit in that amount may be allowed to that person.
- (9) Maximum credits allowable.—The aggregate of the credits that may be allowed to the person being assessed shall not exceed the aggregate of the taxes, interest, penalty or other sums, if any, remaining unpaid by that person for the period beginning four years before the day on which the notice of assessment is sent to him and ending immediately before two years before that day.
- (10) **Restriction.**—No credit may be allowed for any amount that the Minister, pursuant to subsection (5), determines is payable to the person being assessed. R.S.C. 1985, c. 7 (2nd Supp.), s. 38.
- **81.11** (1) **Sums not assessable.**—No assessment shall be made for any penalty or fine imposed pursuant to a conviction for an offence under this Act.
- (2) **Limitation period for assessments.**—Subject to subsections (3) to (5), no assessment shall be made for any tax, penalty, interest or other sum more than four years after the tax, penalty, interest or sum became payable under this Act.
- (3) **Exception where objection or appeal.**—A variation of an assessment, or a reassessment, may be made at any time pursuant to subsection 81.15(4) or 81.38(1).
- (4) Exception where neglect or fraud.—An assessment in respect of any matter may be made at any time where the person to be assessed has, in respect of that matter,
 - (a) made a misrepresentation that is attributable to his neglect, carelessness or wilful default; or
 - (b) committed fraud in filing or making or failing to file or make a return, or in supplying or failing to supply any information, under this Act.
- (5) Exception where waiver.—An assessment in respect of any matter specified in a waiver filed pursuant to subsection (6) may be made at any time within the period specified in the waiver or, if a notice of revocation of the waiver has been filed pursuant to subsection (7), within the period commencing on the day on which the period specified in the waiver commences and ending six months after the day on which the notice is filed.
- (6) **Filing waiver.**—Any person may, within the time otherwise limited by subsection (2) for assessing that person, waive the application of that subsection to him by filing with the Minister a waiver in the prescribed form specifying the period for which, and the matter in respect of which, that person waives the application of that subsection.
- (7) **Revoking waiver.**—Any person who has filed a waiver pursuant to subsection (6) may revoke the waiver on six months notice to the Minister by filing with the Minister a notice of revocation of the waiver in the prescribed form. R.S.C. 1985, c. 7 (2nd Supp.), s. 38.
- **81.12** (1) **Liability not affected.**—Liability under this Act for any tax, penalty, interest or other sum is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.
- (2) **Valid and binding.**—An assessment, subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any irregularity, informality, error, defect or omission therein or in any proceeding under this Act relating thereto.
- (3) **Irregularities.**—No assessment shall be vacated or varied on an appeal by reason only of an irregularity, informality, error, defect or omission on the part of any person in the observance of any directory provision of this Act. R.S.C. 1985, c. 7 (2nd Supp.), s. 38.

- **81.13** (1) **Notice of assessment.**—After completing an assessment, otherwise than pursuant to subsection 81.15(4) or 81.38(1), the Minister shall send to the person assessed a notice of assessment in the prescribed form setting out
 - (a) the date of the assessment;
 - (b) the matter covered by the assessment;
 - (c) the amount owing or overpayment, if any, by the person assessed;
 - (d) a brief explanation of the assessment; and
 - (e) the period within which an objection to the assessment may be made under section 81.15.
- (2) **Tax payable.**—Where an assessment establishes that any tax, penalty, interest or other sum payable under this Act remains unpaid by the person assessed, the notice of assessment shall set out separately the taxes, penalties, interest and other sums payable and the aggregate thereof.
- (3) **Refund payable.**—Where an assessment establishes that an amount is payable pursuant to any of sections 68 to 68.29 to the person assessed, the notice of assessment shall set out the aggregate of the amounts payable.
- (4) **Credit allowable.**—Where an assessment establishes that a credit is allowable pursuant to section 81.1 to the person assessed, the notice of assessment shall set out the aggregate of the credits allowable.
 - (5) No tax, refund or credit.—Where an assessment establishes that
 - (a) no tax, penalty, interest or other sum payable under this Act remains unpaid by the person assessed,
 - (b) no amount is payable pursuant to any of sections 68 to 68.29 to the person assessed, or
 - (c) no credit is allowable pursuant to section 81.1 to the person assessed,
- in respect of the matter covered by the assessment, the notice of assessment shall contain a statement to that effect.
- (6) **Amounts not considered.**—For the purposes of determining the sums, amounts and credits referred to in subsections (2) to (5), where the assessment is a variation of an assessment, or a reassessment, no amount paid by the person assessed or the Minister on account of the amount owing or overpayment as set out in the notice of the original assessment or any subsequent assessment related thereto, and no amount deemed by subsection 81.14(2) to have been paid, shall be taken into consideration.
 - (7) **Definitions.**—For the purposes of this section and section 81.14,
- "amount owing".—"amount owing", in respect of a person assessed, means
 - (a) where the assessment is an original assessment, the amount by which
 - (i) the aggregate of all taxes, penalties, interest and other sums remaining unpaid by that person, as set out in the notice of assessment pursuant to subsection (2)

exceeds

- (ii) the aggregate of
 - (A) all amounts payable to that person, as set out in the notice of assessment pursuant to subsection (3), and
 - (B) the credits allowable to that person, as set out in the notice of assessment pursuant to subsection (4), and

- (b) where the assessment is a variation of an assessment, or a reassessment, the amount by which
 - (i) the amount obtained by subtracting
 - (A) the amount paid by that person on account of the amount owing as set out in the notice of the original assessment or any subsequent assessment related thereto

from

(B) the aggregate of all taxes, penalties, interest and other sums remaining unpaid by that person, as set out in the notice of the varied assessment or reassessment pursuant to subsection (2)

exceeds

- (ii) the amount obtained by subtracting
 - (A) the amount paid to that person pursuant to subsection 81.14(1) in respect of an overpayment as set out in the notice of the original assessment or any subsequent assessment related thereto

from

- (B) the aggregate of
 - (I) all amounts payable to that person, as set out in the notice of the varied assessment or reassessment pursuant to subsection (3), and
 - (II) the credits allowable to that person, as set out in the notice of the varied assessment or reassessment pursuant to subsection (4);

"overpayment".—"overpayment", in respect of a person assessed, means

- (a) where the assessment is an original assessment, the amount by which the aggregate described in subparagraph (a)(ii) of the definition "amount owing" in this subsection exceeds the aggregate described in subparagraph (a)(i) of that definition, and
- (b) where the assessment is a variation of an assessment, or a reassessment, the amount by which the amount described in subparagraph (b)(ii) of that definition exceeds the amount described in subparagraph (b)(i) of that definition. R.S.C. 1985, c. 7 (2nd Supp.), s. 38.
- **81.14** (1) **Payment by Minister on assessment.**—Where an assessment establishes that there is an overpayment by the person assessed, the Minister shall pay to that person the amount of the overpayment as set out in the notice of assessment.
- (2) **Presumption.**—Where an assessment establishes that an amount is payable pursuant to any of sections 68 to 68.29, or a credit is allowable pursuant to section 81.1, to the person assessed,
 - (a) that person is deemed to have paid, on the day on which the notice of assessment is sent to him, an amount equal to the lesser of
 - (i) where the assessment is an original assessment, the aggregates described in subparagraphs (a)(i) and (ii) of the definition "amount owing" in subsection 81.13(7), and
 - (ii) where the assessment is a variation of an assessment, or a reassessment, the amounts described in subparagraphs (b)(i) and (ii) of that definition
 - on account of that person's tax, penalty, interest or other sum payable under this Act in respect of the matter covered by the assessment; and
 - (b) the Minister is deemed to have paid, on that day, to the person assessed in accordance

with section 72 the amount, if any, by which the amount deemed by paragraph (a) to have been paid exceeds the aggregate of the credits described in clause (a)(ii)(B) or subclause (b)(ii)(B)(II), as the case may be, of that definition.

(3) **No deemed double payments.**—Subsection (2) ceases to apply in respect of an assessment if the assessment is subsequently vacated or varied or a reassessment is made in respect of any matter covered by the assessment but, for greater certainty, subject to this subsection, where the assessment is varied or the reassessment is made otherwise than pursuant to subsection 81.15(4) or 81.38(1), subsection (2) applies in respect of the varied assessment or the reassessment, as the case may be. R.S.C. 1985, c. 7 (2nd Supp.), s. 38.

Objections

- **81.15** (1) **Objection to assessment.** Any person who has been assessed, otherwise than pursuant to subsection (4) or 81.38(1), and who objects to the assessment may, within ninety days after the day on which the notice of assessment is sent to him, serve on the Minister a notice of objection in the prescribed form setting out the reasons for the objection and all relevant facts on which that person relies.
- (2) **Service.**—Service of a notice of objection on the Minister shall be effected by prepaid mail addressed to the Minister at Ottawa.
- (3) Acceptance of other service.—The Minister may accept a notice of objection notwithstanding that it was not served in accordance with subsection (2).
- (4) **Consideration of objection.**—Subject to section 81.21, on receipt of a notice of objection, the Minister shall, with all due dispatch, reconsider the assessment and vacate, vary or confirm the assessment or make a reassessment.
- (5) **Notice of decision.**—After reconsidering an assessment, the Minister shall send to the person objecting a notice of decision in the prescribed form setting out
 - (a) the date of the decision:
 - (b) the amount owing or overpayment by the person objecting, where the Minister varies the assessment or makes a reassessment;
 - (c) a brief explanation of the decision; and
 - (d) the period within which an appeal may be made under section 81.19 or 81.2.
- (6) **Tax payable.**—Where the variation of an assessment, or a reassessment, on an objection establishes that any tax, penalty, interest or other sum payable under this Act remains unpaid by the person objecting, the notice of the decision shall set out separately the taxes, penalties, interest and other sums payable and the aggregate thereof.
- (7) **Refund payable.**—Where the variation of an assessment, or a reassessment, on an objection establishes that an amount is payable pursuant to any of sections 68 to 68.29 to the person objecting, the notice of decision shall set out the aggregate of the amounts payable.
- (8) **Credit allowable.**—Where the variation of an assessment, or a reassessment, on an objection establishes that a credit is allowable pursuant to section 81.1 to the person objecting, the notice of decision shall set out the aggregate of the credits allowable.
- (9) **No tax, refund or credit.** Where the variation of an assessment, or a reassessment, on an objection establishes that
 - (a) no tax, penalty, interest or other sum payable under this Act remains unpaid by the person objecting,

- (b) no amount is payable pursuant to any of sections 68 to 68.29 to the person objecting, or
- (c) no credit is allowable pursuant to section 81.1 to the person objecting,

in respect of the matter covered by the varied assessment or reassessment, the notice of decision shall contain a statement to that effect.

- (10) Amounts not considered.—For the purposes of determining the sums, amounts and credits referred to in subsections (6) to (9), no amount paid by the person objecting or the Minister on account of the amount owing or overpayment as set out in the notice of assessment, and no amount deemed by subsection 81.14(2) to have been paid, shall be taken into consideration.
 - (11) **Definitions.**—For the purposes of this section and section 81.16,
- "amount owing".—"amount owing", in respect of a person objecting, means the amount by which
 - (a) the amount obtained by subtracting
 - (i) the amount paid by that person on account of the amount owing as set out in the notice of assessment

from

(ii) the aggregate of all taxes, penalties, interest and other sums remaining unpaid by that person, as set out in the notice of decision pursuant to subsection (6)

exceeds

- (b) the amount obtained by subtracting
 - (i) the amount paid to that person pursuant to subsection 81.14(1)

from

- (ii) the aggregate of
 - (A) all amounts payable to that person, as set out in the notice of decision pursuant to subsection (7), and
 - (B) the credits allowable to that person, as set out in the notice of decision pursuant to subsection (8);
- "overpayment".—"overpayment", in respect of a person objecting, means the amount by which the amount described in paragraph (b) of the definition "amount owing" in this subsection exceeds the amount described in paragraph (a) of that definition. R.S.C. 1985, c. 7 (2nd Supp.), s. 38.
- **81.16** (1) Payment by Minister on objection.—Where the variation of an assessment, or a reassessment, on an objection establishes that there is an overpayment by the person objecting, the Minister shall pay to that person the amount of the overpayment as set out in the notice of decision.
- (2) **Presumption.**—Where the variation of an assessment, or a reassessment, on an objection establishes that an amount is payable pursuant to any of sections 68 to 68.29, or a credit is allowable pursuant to section 81.1, to the person objecting,
 - (a) that person is deemed to have paid, on the day on which the notice of decision is sent to him, an amount equal to the lesser of the amounts described in paragraphs (a) and (b) of the definition "amount owing" in subsection 81.15(11) on account of the person's tax, penalty, interest or other sum payable under this Act in respect of the matter covered by the varied assessment or reassessment; and

- (b) the Minister is deemed to have paid, on that day, to the person assessed in accordance with section 72 the amount, if any, by which the amount deemed by paragraph (a) to have been paid exceeds the aggregate of the credits described in clause (b)(ii)(B) of that definition.
- (3) **No deemed double payments.**—Subject to subsection 81.38(2), subsection (2) ceases to apply in respect of an assessment if the assessment is subsequently vacated or varied or a reassessment is made in respect of any matter covered by the reassessment.
- (4) Interest on reassessment.—Subject to subsection (5), where an amount is paid pursuant to subsection (1), interest at the prescribed rate shall be paid, in respect of each day between the date of the notice of the assessment that is the subject of the objection and the day on which the payment was sent, and compounded monthly on the total amount of the payment and interest outstanding.
- (5) **Idem.**—Where a person has paid an amount on account of the amount owing as set out in a notice of assessment and a payment is made to that person pursuant to subsection (1) on an objection to the assessment, interest at the prescribed rate shall be paid, in respect of each day between the day on which the amount was paid by that person and the day on which the payment was sent to that person, and compounded monthly on the total amount of the payment to that person and interest outstanding.
- (6) **Minimum interest.**—No interest of less than one dollar is payable pursuant to this section. R.S.C. 1985, c. 7 (2nd Supp.), s. 38.
- **81.17** (1) **Objection to determination.**—Any person who has made an application under any of sections 68 to 69 and who objects to the determination of the Minister respecting the application may, within ninety days after the day on which the notice of determination is sent to that person, serve on the Minister a notice of objection in the prescribed form setting out the reasons for the objection and all relevant facts on which that person relies.
- (2) **Service.** Service of a notice of objection on the Minister shall be effected by prepaid mail addressed to the Minister at Ottawa.
- (3) Acceptance of other service.—The Minister may accept a notice of objection notwithstanding that it was not served in accordance with subsection (2).
- (4) **Consideration of objection.**—Subject to section 81.21, on receipt of a notice of objection, the Minister shall, with all due dispatch, reconsider the determination and vacate, vary or confirm the determination.
- (5) **Notice of decision.**—After reconsidering a determination, the Minister shall send to the person objecting a notice of decision in the prescribed form setting out
 - (a) the date of the decision;
 - (b) the amount payable, if any, to the person objecting;
 - (c) a brief explanation of the decision, where the Minister rejects the objection in whole or in part; and
 - (d) the period within which an appeal may be taken under section 81.19 or 81.2.
- (6) **Definition of "amount payable".** For the purposes of this section and section 81.18, "amount payable", in respect of a person objecting, means the amount by which
- (a) the aggregate of all amounts payable to that person pursuant to sections 68 to 69 exceeds

- (b) the amount paid to that person pursuant to subsection 72(6) or authorized to be deducted by that person pursuant to subsection 74(1). R.S.C. 1985, c. 7 (2nd Supp.), s. 38.
- **81.18** (1) Payment by Minister.—Subject to subsection (2), where the reconsideration of a determination on an objection establishes that there is an amount payable to the person objecting, the Minister shall pay to that person the amount payable as set out in the notice of decision.
- (2) Authorization of deduction.—Where the reconsideration of a determination on an objection establishes that there is an amount payable to the person objecting and that person has, in the application that is the subject of the reconsideration, requested the Minister to authorize a deduction under subsection 74(1), the Minister may, in the notice of decision, authorize that person to deduct that amount in accordance with that subsection.
- (3) Interest on refund payments.—Where an amount is paid pursuant to subsection (1), interest at the prescribed rate shall be paid, in respect of each day between the day that is sixty days after the day on which the application that is the subject of the reconsideration was received by the Minister and the day on which the payment is sent, and compounded monthly on the total amount of the payment and interest outstanding.
- (4) Interest on refund deductions.—Where a deduction is authorized pursuant to subsection (2), interest at the prescribed rate shall be authorized as a deduction in accordance with subsection 74(1), calculated in respect of each day between the day that is sixty days after the day on which the application was received by the Minister and the day on which the notice of decision was sent, and compounded monthly on the total amount of the deduction and interest outstanding.
- (5) **Minimum interest.**—No interest of less than one dollar is payable pursuant to subsection (3) or shall be authorized as a deduction under subsection (4). R.S.C. 1985, c. 7 (2nd Supp.), s. 38.

Rights of Appeal

- **81.19** Appeal to Tribunal from assessment or determination of Minister.—Any person who has served a notice of objection under section 81.15 or 81.17, other than a notice in respect of Part I, may, within ninety days after the day on which the notice of decision on the objection is sent to him, appeal the assessment or determination to the Tribunal. R.S.C. 1985, c. 7 (2nd Supp.), s. 38; R.S.C. 1985, c. 47 (4th Supp.), s. 52.
- **81.2** (1) **Appeal to Court from assessment or determination of Minister.**—Any person who has served a notice of objection under section 81.15 or 81.17, other than a notice in respect of Part I, may, in lieu of appealing to the Tribunal under section 81.19, appeal the assessment or determination to the Federal Court–Trial Division at any time when, under section 81.19, that person could have appealed to the Tribunal.
- (2) **Idem.**—Any person who has served a notice of objection under section 81.15 or 81.17 in respect of Part I may, within ninety days after the day on which the notice of decision on the objection is sent to him, appeal the assessment or determination to the Federal Court–Trial Division. R.S.C. 1985, c. 7 (2nd Supp.), s. 38; R.S.C. 1985, c. 47 (4th Supp.), s. 52.
- **81.21** (1) **Appeal to Tribunal or Court from assessment or determination of Minister.**—Any person who has served a notice of objection under section 81.15 or 81.17, other than a notice in respect of Part I, and who states therein that he waives reconsideration of the assessment or determination to which the notice relates and wishes to appeal the assessment or

determination directly to the Tribunal or to the Federal Court-Trial Division may so appeal if the Minister consents thereto.

- (2) **Appeal to Court from assessment or determination of Minister.**—Any person who has served a notice of objection under section 81.15 or 81.17 in respect of Part I and who states therein that he waives reconsideration of the assessment or determination to which the notice relates and wishes to appeal the assessment or determination directly to the Federal Court-Trial Division may so appeal if the Minister consents thereto.
- (3) **Copy of notice filed.**—Where the Minister consents to an appeal pursuant to subsection (1) or (2), the Minister shall file a copy of the notice of objection with the Tribunal or Federal Court–Trial Division, as the case may be, and send a notice of his action to the person who has served the notice of objection. R.S.C. 1985, c. 7 (2nd Supp.), s. 38; R.S.C. 1985, c. 47 (4th Supp.), s. 52.
- **81.22** (1) **Appeal to Tribunal or Court where no decision.**—Where a person has served a notice of objection under section 81.15 or 81.17, other than a notice in respect of Part I, and the Minister has not sent a notice of his decision to that person within one hundred and eighty days after the notice of objection was served, that person may appeal the assessment or determination to which the notice relates to the Tribunal or the Federal Court–Trial Division.
- (2) **Appeal to Court where no decision.**—Where a person has served a notice of objection under section 81.15 or 81.17 in respect of Part I and the Minister has not sent a notice of his decision to that person within one hundred and eighty days after the notice of objection was served, that person may appeal the assessment or determination to which the notice relates to the Federal Court—Trial Division.
- (3) **Limitation.**—No appeal may be instituted pursuant to this section after the Minister has sent a notice of decision to the person who served the notice of objection. R.S.C. 1985, c. 7 (2nd Supp.), s. 38; R.S.C. 1985, c. 47 (4th Supp.), s. 52.
- **81.23** (1) **Appeal to Tribunal or Federal Court–Trial Division.**—Where a person has served a notice of objection under section 81.15 in respect of an assessment and thereafter the Minister, otherwise than pursuant to subsection 81.15(4) or 81.38(1), varies the assessment or makes a reassessment in respect of any matter covered by the assessment and sends to that person a notice of assessment in respect of the varied assessment or reassessment, that person may, without serving a notice of objection to the varied assessment or reassessment,
 - (a) appeal the varied assessment or reassessment to the Tribunal or the Federal Court—Trial Division in accordance with section 81.19 or 81.2, as the case may be, as if the notice of assessment were a notice of decision of the Minister; or
 - (b) if an appeal has been instituted in respect of the assessment, amend the appeal by joining thereto an appeal in respect of the varied assessment or reassessment in such manner and on such terms, if any, as the Tribunal or the court hearing the appeal, as the case may be, deems appropriate.
- (2) **Idem.**—Where a person has appealed an assessment under section 81.22 and thereafter the Minister, pursuant to subsection 81.15(4), varies the assessment or makes a reassessment in respect of any matter covered by the assessment and sends to that person a notice of decision in respect of the varied assessment or reassessment, that person may, without serving a notice of objection to the varied assessment or reassessment, amend the appeal by joining thereto an appeal in respect of the varied assessment or reassessment in such manner and on such terms, if any, as the Tribunal or the Federal Court—Trial Division, as the case may be, deems appropriate, R.S.C. 1985, c. 7 (2nd Supp.), s. 38; R.S.C. 1985, c. 47 (4th Supp.), s. 52.

81.24 Appeal to Court from decision of Tribunal.—Any party to an appeal to the Tribunal under section 81.19, 81.21, 81.22 or 81.23 may, within one hundred and twenty days after the day on which the decision of the Tribunal is sent to that party, appeal the decision to the Federal Court—Trial Division. R.S.C. 1985, c. 7 (2nd Supp.), s. 38; R.S.C. 1985, c. 47 (4th Supp.), s. 52.

Appeals to Tribunal

- **81.25** (1) **Notice to Deputy Minister.**—Where an appeal to the Tribunal is instituted otherwise than pursuant to subsection 81.21(1), the Tribunal shall send a notice of the appeal to the Deputy Minister at Ottawa.
- (2) Material sent to Tribunal.—On the receipt of a notice of an appeal under subsection (1) or the filing of a notice of objection with the Tribunal under subsection 81.21(3), the Deputy Minister shall send to the Tribunal copies of all returns, applications, notices of assessment, notices of objection, notices of decision and notifications, if any, that are relevant to the appeal. R.S.C. 1985, c. 7 (2nd Supp.), s. 38; R.S.C. 1985, c. 47 (4th Supp.), s. 52.
- **81.26 Hearing of appeal.**—The Tribunal may hear an appeal under this Part in private if, on application by any party to the appeal, the Tribunal is satisfied that the circumstances of the case justify the hearing being so held. R.S.C. 1985, c. 7 (2nd Supp.), s. 38; R.S.C. 1985, c. 47 (4th Supp.), s. 52.
- **81.27** (1) **Disposition of appeal.**—After hearing an appeal under this Part, the Tribunal may dispose of the appeal by making such finding or declaration as the nature of the matter may require and by making an order
 - (a) dismissing the appeal; or
 - (b) allowing the appeal in whole or in part and vacating or varying the assessment or determination or referring it back to the Minister for reconsideration.
 - (2) Costs.—No costs may be awarded by the Tribunal on the disposition of an appeal.
- (3) **Decision of Tribunal.**—A decision of the Tribunal disposing of an appeal shall be recorded in writing and include the reasons for the decision, and a copy thereof shall forthwith be sent to the parties to the appeal.
- (4) Penalty where no reasonable grounds for appeal to Tribunal.—Where the Tribunal disposes of an appeal in respect of an assessment or where such an appeal to the Tribunal is discontinued or dismissed without a hearing, the Tribunal may, on application by the Minister, order the person instituting the appeal to pay to the Receiver General an amount not exceeding ten per cent of the amount that was in controversy, if the Tribunal determines that there were no reasonable grounds for the appeal and that one of the main purposes for instituting or maintaining the appeal was to defer the payment of any tax, penalty, interest or other sum payable under this Act. R.S.C. 1985, c. 7 (2nd Supp.), s. 38; R.S.C. 1985, c. 47 (4th Supp.), s. 52.

Appeals to Court

- **81.28** (1) **Institution of appeal to Court.**—An appeal to the Federal Court–Trial Division under section 81.2, 81.22 or 81.24 shall be instituted,
 - (a) in the case of an appeal by a person, other than the Minister, in the manner set out in section 48 of the *Federal Court Act*; and

- (b) in the case of an appeal by the Minister, in the manner provided by the rules made pursuant to the *Federal Court Act* for the commencement of an action.
- (2) **Counter-claim or cross-demand.**—If the respondent in an appeal under section 81.24 from a decision of the Tribunal desires to appeal that decision, he may do so, whether or not the time fixed by that section has expired, by a counter-claim or cross-demand instituted in accordance with the *Federal Court Act* and the rules made pursuant thereto.
- (3) **Procedure.**—An appeal to the Federal Court–Trial Division under this Part shall be deemed to be an action in the Federal Court to which the *Federal Court Act*, and the rules made pursuant thereto applicable to an ordinary action apply, except as varied by special rules made in respect of such appeals and except that
 - (a) the rules concerning joinder of parties and causes of action do not apply except to permit the joinder of appeals under this Part;
 - (b) a copy of a notice of objection filed with the Federal Court–Trial Division pursuant to subsection 81.21(3) is deemed to be a statement of claim that is filed with the Court by the person serving the notice and served by him on the Minister on the day it was so filed by the Minister; and
 - (c) a copy of a notice of objection filed by the Minister pursuant to subsection 81.21(3) or an originating document filed by the Minister pursuant to subsection (1) shall be served in the manner provided in subsection (4).
- (4) **Service.**—Where a copy of a notice of objection is filed by the Minister pursuant to subsection 81.21(3) or an originating document is filed by the Minister pursuant to subsection (1) and he files two copies or additional copies thereof, together with a certificate as to the latest known address of the other party to the appeal, an officer of the Court shall, after verifying the accuracy of the copies, forthwith on behalf of the Minister serve the copy of the notice of objection or the originating document, as the case may be, on that other party by sending the copies or additional copies thereof by registered or certified letter addressed to that other party at the address set out in the certificate.
- (5) **Certificate.**—Where copies have been served on a party pursuant to subsection (4), a certificate signed by an officer of the Court as to the date of filing and the date of mailing of the copies shall be transmitted to the office of the Deputy Attorney General of Canada and is evidence of the date of filing and the date of service of the documents referred to therein. R.S.C. 1985, c. 7 (2nd Supp.), s. 38; R.S.C. 1985, c. 47 (4th Supp.), s. 52.
- **81.29** (1) **Notice to Tribunal.**—Where an appeal is instituted to the Federal Court-Trial Division from a decision of the Tribunal, the Court shall send a notice of the appeal to the Tribunal.
- (2) Material sent to Federal Court-Trial Division. —On the receipt of a notice of an appeal under subsection (1), the Tribunal shall send to the Court all material filed with or sent to the Tribunal in connection with the appeal, together with a transcript of the record of proceedings before the Tribunal.
- (3) **Idem.**—Where an appeal is instituted to the Federal Court Trial Division from an assessment or determination, the Deputy Minister shall send to the Court copies of all returns, applications, notices of assessment, notices of objection, notices of decision and notifications, if any, that are relevant to the appeal. R.S.C. 1985, c. 7 (2nd Supp.), s. 38; R.S.C. 1985, c. 47 (4th Supp.), s. 52.
 - **81.3 Hearing of appeal.** The Federal Court–Trial Division may hear an appeal under

this Part in private if, on application by any party to the appeal, the Court is satisfied that the circumstances of the case justify the hearing being so held. R.S.C. 1985, c. 7 (2nd Supp.), s. 38.

- **81.31** (1) **Disposition of appeal.**—After hearing an appeal under this Part, the Federal Court—Trial Division may dispose of the appeal by making such order, judgment, finding or declaration as the nature of the matter may require including, without limiting the generality of the foregoing, an order
 - (a) dismissing the appeal; or
 - (b) allowing the appeal in whole or in part and vacating or varying the assessment or determination or referring it back to the Minister for reconsideration.
- (2) **Order.**—Subject to subsection (3), on the disposition of an appeal, the Federal Court—Trial Division may order payment or repayment of any tax, penalty, interest, sum or costs.
- (3) Costs.—Where the amount in dispute on an appeal by the Minister, other than by way of counter-claim or cross-demand, from a decision of the Tribunal does not exceed ten thousand dollars, the Minister, on disposition of the appeal, shall pay all reasonable and proper costs of the other party to the appeal in connection therewith.
- (4) Penalty where no reasonable grounds for appeal to Court.—Where the Federal Court—Trial Division disposes of an appeal in respect of an assessment or where such an appeal to the Court is discontinued or dismissed without a hearing, the Court may, on application by the Minister and whether or not the Court awards costs, order the person instituting the appeal to pay to the Receiver General an amount not exceeding ten per cent of the amount that was in controversy, if the Court determines that there were no reasonable grounds for the appeal and that one of the main purposes for instituting or maintaining the appeal was to defer the payment of any tax, penalty, interest or other sum payable under this Act. R.S.C. 1985, c. 7 (2nd Supp.), s. 38; R.S.C. 1985, c. 47 (4th Supp.), s. 52.

Extension of Time for Objection or Appeal

- **81.32** (1) Extension of time by Tribunal.—Subject to subsection (6), any person entitled to serve a notice of objection under section 81.15 or 81.17, other than a notice in respect of Part I, or to appeal to the Tribunal under section 81.19 may, at any time before or after the expiration of the time limited by that section for so objecting or appealing, apply to the Tribunal for an order extending that time.
- (2) **Procedure.**—An application under subsection (1) shall be made by filing with the Tribunal three copies of the application.
- (3) Extension of time by Federal Court–Trial Division.—Subject to subsection (6), any person entitled to serve a notice of objection under section 81.15 or 81.17 in respect of Part I or to appeal to the Federal Court–Trial Division under section 81.2 or 81.24 may, at any time before or after the expiration of the time limited by that section for so objecting or appealing, apply to the Court for an order extending that time.
- (4) **Procedure.**—An application under subsection (3) shall be made by filing a notice of the application with the Court and serving a copy of the notice on the Deputy Attorney General of Canada at least fourteen days before the application is returnable.
- (5) **Reasons.**—An application under subsection (1) or (3) shall set out the reasons why the applicant is or was not able to comply with the time limitation.
- (6) **Limitation.**—No application may be made pursuant to subsection (1) or (3) more than one year after the expiration of the time limited.

- (7) **Order.**—On application pursuant to subsection (1) or (3), the Tribunal or Court may grant an order extending the time limited if
 - (a) it has not previously made an order extending that time; and
 - (b) it is satisfied that
 - (i) the circumstances are such that it is just and equitable to extend the time,
 - (ii) but for the circumstances referred to in subparagraph (i), an objection would have been made or an appeal would have been instituted, as the case may be, within that time,
 - (iii) the application was brought as soon as circumstances permitted, and
 - (iv) there are reasonable grounds for the objection or appeal, R.S.C. 1985, c. 7 (2nd Supp.), s. 38; R.S.C. 1985, c. 47 (4th Supp.), s. 52.

Purchaser Objections and Appeals

- **81.33** (1) Right to institute proceedings or apply for extensions.—Subject to this section, where
 - (a) a vendor of goods has made an application under section 68.2 in respect of the sale of the goods and the application was rejected in whole or in part by the Minister, or
 - (b) a vendor of goods has not paid tax in respect of the sale of the goods
 - (i) on the basis that the tax was not payable by virtue of subsection 23(6), (7), (8), or (8.1) or 50(5), or
 - (ii) on the basis that the goods were sold in circumstances that, by virtue of the nature of the purchaser of the goods or the use to which the goods were to be put or by virtue of both such nature and use, rendered the sale exempt from tax under subsection 51(1)

and subsequently the vendor was assessed tax by the Minister in respect of the sale and has recovered the amount of that tax, or a part thereof, from the purchaser of the goods,

the purchaser of the goods may, in substitution for the vendor and in the purchaser's own name as if he were the vendor, institute proceedings under any of sections 81.15, 81.17, 81.19, 81.2, 81.21, 81.22, 81.23 or 81.24 in respect of the rejection or assessment or apply for an extension, under section 81.32 of the time limited for instituting any such proceedings.

- (2) Condition precedent.—A purchaser may institute proceedings or apply for an extension of the time limited for instituting proceedings pursuant to subsection (1) only if
 - (a) the vendor has unconditionally assigned to the purchaser in the prescribed form his rights, if any,
 - (i) to institute proceedings under sections 81.15, 81.17, 81.19, 81.2, 81.21, 81.22, 81.23 or 81.24,
 - (ii) to make an application under section 81.32, and
 - (iii) to receive a payment pursuant to section 81.16, 81.18 or 81.38

in respect of the sale and the Minister is served with a true copy of the assignment in accordance with subsection (3);

- (b) the vendor has not, within the time limited for instituting the proceedings, instituted the proceedings or applied for an extension, under section 81.32, of that time; or
- (c) the proceedings are an appeal arising from proceedings previously instituted by the purchaser pursuant to subsection (1).

- (3) **Service.**—Service of a true copy of an assignment on the Minister shall be effected, by prepaid mail addressed to the Minister at Ottawa, within the time limited for instituting the proceedings to which the assignment relates.
- (4) Acceptance of other service.—The Minister may accept a true copy of an assignment notwithstanding that it was not served by prepaid mail addressed to the Minister at Ottawa.
- (5) **Deemed extension.**—For the purposes of permitting a purchaser to institute proceedings or apply for an extension of the time limited for instituting proceedings pursuant to subsection (1) in the circumstances described in paragraph (2)(b), the time limited for instituting the proceedings is deemed to be extended by thirty days.
- (6) **Purchaser stands in place of vendor.**—Proceedings and applications under subsection (1) shall be dealt with in all respects as if the purchaser were the vendor and any amounts found, on the conclusion of the proceedings, to be payable under subsection 81.16(1), 81.18(1) or 81.38(1) shall be paid to the purchaser and not to the vendor.
- (7) **Exception.**—Where a vendor applies for an extension, under section 81.32, of the time limited for instituting any proceedings after the time has expired, the purchaser may not institute the proceedings or apply for an extension of the time limited for instituting the proceedings pursuant to subsection (1).
- (8) **Preclusion.**—Where a purchaser institutes proceedings or applies for an extension of the time limited for instituting proceedings pursuant to subsection (1), the vendor may not apply for an extension, under section 81.32, of the time limited for instituting the proceedings or, in the case described in paragraph (1)(a), make a further application under section 68.2 in respect of the sale.
- (9) **Intervention.**—Notwithstanding section 81.34, a vendor of goods may intervene in any proceedings or application for extension of the time limited for instituting proceedings instituted by a purchaser of the goods pursuant to subsection (1), as a party to the proceedings or application. R.S.C. 1985, c. 7 (2nd Supp.), s. 38

Interventions

- **81.34** (1) **Interventions.**—On application, the Tribunal or Federal Court–Trial Division may make an order permitting any person to intervene in an appeal or a reference to it under this Part as a party thereto, if it is satisfied that the applicant has a substantial and direct interest in the subject-matter of the appeal or reference.
- (2) Assistance.—On application, the Tribunal or Federal Court-Trial Division may make an order permitting any person to render assistance to it by way of argument in an appeal or a reference to it under this Part, but such person shall not be added as a party thereto.
- (3) **Terms.**—The Tribunal or Federal Court–Trial Division may impose such terms and conditions as it deems appropriate in connection with an order under this section.
- (4) **Procedure.**—An application under subsection (1) shall be made by filing a notice of the application with the Tribunal or Court, as the case may be, and serving a copy of the notice on the parties to the appeal or reference at least fourteen days before the application is returnable.
- (5) **Matters considered.**—The Tribunal or Court, in any application under this section, shall consider the possibility of undue delay or prejudice or any other matter that it deems appropriate in exercising its discretion pursuant to this section. R.S.C. 1985, c. 7 (2nd Supp.), s. 38; R.S.C. 1985, c. 47 (4th Supp.) s. 52.

81.35 [Added R.S.C. 1985, c. 7 (2nd Supp.), s. 38; repealed R.S.C. 1985, c. 47 (4th Supp.), s. 52.]

References

- **81.36** (1) Reference to Federal Court-Trial Division.—The Minister may refer any question of law, fact or mixed law and fact relating to this Act to the Federal Court-Trial Division for hearing and determination.
 - (2) Contents of reference.—A reference under subsection (1) shall set out
 - (a) the question to be determined;
 - (b) the names of any specific persons that the Minister seeks to have bound by the determination; and
 - (c) the facts and arguments on which the Minister intends to rely at the hearing.
- (3) **Service.**—A copy of a reference under subsection (1) shall be served by the Minister on the persons, if any, named in the reference pursuant to subsection (2) and on such other persons as, in the opinion of the Court, are likely to be affected by the determination of the question set out in the reference.
- (4) **Notice.**—Where a reference under subsection (1) is made to the Court and the Court is of the opinion that persons, other than those named in the reference pursuant to subsection (2), are likely to be affected by the determination of the question set out in the reference but that the identity of those persons is not known or readily ascertainable, the Court may direct that notice of the reference be given in such manner as it considers will most likely come to the attention of those other persons.
- (5) **Suspension of time limitations.** The period beginning on the day the Minister institutes proceedings in the Court pursuant to subsection (1) to have a question determined and ending on the day the question is finally determined shall not be counted in determining
 - (a) the time limited by subsection 81.15(1) or 81.17(1) for serving a notice of objection by any person who is served with a copy of the reference pursuant to subsection (3) or who appears as a party at the hearing to determine the question;
 - (b) the time limited by section 81.19, 81.2 or 81.24 for instituting an appeal by any person referred to in paragraph (a); or
 - (c) the time limited by section 82 for commencing proceedings to recover any tax, penalty, interest or other sum payable under this Act by any person referred to in paragraph (a).
- (6) **Final and binding.**—A determination of the Federal Court Trial Division under this section is, subject to an appeal, final and binding on any person who is served with a copy of the reference pursuant to subsection (3) or who appears as a party at the hearing to determine the question. R.S.C. 1985, c. 7 (2nd Supp.), s. 38.
- **81.37** (1) **Reference to Federal Court–Trial Division.** Where the Minister and a person agree in writing that a question of law, fact or mixed law and fact relating to this Act should be determined by the Federal Court–Trial Division, that question shall be determined by the Court pursuant to subsection 17(3) of the *Federal Court Act*.
- (2) **Suspension of time limitations.**—The period beginning on the day proceedings are instituted in the Court pursuant to subsection (1) to have a question determined and ending on the day the question is finally determined shall not be counted in determining

- (a) the time limited by subsection 81.15(1) or 81.17(1) for serving a notice of objection by the person who agreed to refer the question or any person who appears as a party at the hearing to determine the question;
- (b) the time limited by section 81.19, 81.2 or 81.24 for instituting an appeal by any person referred to in paragraph (a); or
- (c) the time limited by section 82 for commencing proceedings to recover any tax, penalty, interest or other sum payable under this Act by any person referred to in paragraph (a). R.S.C. 1985, c. 7 (2nd Supp.), s. 38.

Payments by Minister on Appeals

- **81.38** (1) **Payment by Minister on appeal.**—Where the Tribunal, the Federal Court or the Supreme Court of Canada has, on the disposition of an appeal under this Part,
 - (a) vacated or varied an assessment or a determination of the Minister respecting an application under any of sections 68 to 69,
 - (b) referred an assessment or a determination described in paragraph (a) back to the Minister for reconsideration, or
- (c) ordered the Minister to pay or repay any tax, penalty, interest or other sum, unless otherwise directed in writing by the person who served the notice of objection, the Minister shall, with all due dispatch, whether or not a further appeal is instituted.
 - (d) where the assessment or determination is referred back to the Minister, reconsider the assessment or determination and vary the assessment or determination or make a reassessment or a further determination in accordance with the decision of the Tribunal or Court, and
 - (e) pay or repay, or surrender any security accepted for the payment of, any tax, penalty, interest or other sum in accordance with the varied assessment or determination, the reassessment or further determination of the Minister or the decision or order of the Tribunal or Court.
- (2) **Provisions applicable to reconsideration of assessments.**—Subsections 81.15(5) to (11) and 81.16(2) and (3) apply, with such modifications as the circumstances require, to the reconsideration of an assessment under subsection (1) as if
 - (a) the words "or a notice of decision" were added immediately after the words "notice of assessment" in subsection 81.15(10) and paragraph (a) of the definition "amount owing" in subsection 81.15(11);
 - (b) the reference in subsection 81.15(10) to "subsection 81.14(2)" were a reference to "subsection 81.14(2) or 81.16(2)"; and
 - (c) the reference in paragraph (b) of the definition "amount owing" in subsection 81.15(11) to "subsection 81.14(1)" were a reference to "subsections 81.14(1), 81.16(1) and 81.38(1)".
- (3) **Provisions applicable to reconsideration of determinations.**—Subsections 81.17(5) and (6) apply, with such modifications as the circumstances require, to the reconsideration of a determination under subsection (1) as if
 - (a) the reference in paragraph (b) of the definition "amount payable" in subsection 81.17(6) to "subsection 72(6)" were a reference to "subsections 72(6), 81.18(1) and 81.38(1)"; and

- (b) the reference in that paragraph to "subsection 74(1)" were a reference to "subsections 74(1) and 81.18(2)".
- (4) Payment in other appeals.—Where, having regard to the reasons given on the disposition of an appeal referred to in subsection (1), the Minister is satisfied that it would be just and equitable to make a payment to, or to surrender any security furnished by or on behalf of, any other person who has served a notice of objection or instituted an appeal, the Minister may, with the consent of that person and subject to such terms and conditions as the Minister may prescribe, pay or repay to that person any tax, penalty, interest or other sum or surrender any security accepted for the payment thereof.
- (5) **Right of appeal preserved.**—Nothing in this section shall be construed as derogating from the right of the Minister to appeal from a decision of the Tribunal or the Federal Court on an appeal referred to in subsection (1), and any such appeal from a decision of the Tribunal shall proceed as if it were an appeal from the assessment or determination that was the subject of the decision.
- (6) **Interest on assessment.**—Subject to subsection (7), where a payment is made pursuant to subsection (1) or (4) in respect of an assessment, interest at the prescribed rate shall be paid, in respect of each day between the date of the notice of assessment and the day on which the payment was sent, and compounded monthly on the total amount of the payment and interest outstanding.
- (7) **Idem.**—Where a person has paid an amount on account of the amount owing as set out in a notice of assessment or a notice of decision and a payment is made to that person pursuant to subsection (1) or (4) in respect of the assessment, interest at the prescribed rate shall be paid, in respect of each day between the day on which the amount was paid by that person and the day on which the payment was sent to that person, and compounded monthly on the total amount of the payment to that person and interest outstanding.
- (8) Interest on refunds.—Where a payment is made under subsection (1) or (4) in respect of an application under any of sections 68 to 68.161 and 68.165 to 69, interest at the prescribed rate shall be paid, in respect of each day between the day that is sixty days after the day on which the application was received by the Minister and the day on which the payment was sent, and compounded monthly on the total amount of the payment and interest outstanding.
- (8.1) **Interest on refunds.**—Where a payment is made under subsection (1) or (4) in respect of an application under section 68.162, 68.163 or 68.164, interest at the prescribed rate shall be paid, in respect of each day between the day on which the application was received by the Minister and the day on which the payment was sent, and compounded monthly on the total amount of the payment and interest outstanding.
- (9) **Minimum interest.**—No interest of less than one dollar is payable pursuant to this section. R.S.C. 1985, c. 7 (2nd Supp.), s. 38; R.S.C. 1985, c. 47 (4th Supp.), s. 52; S.C. 1994, c. 29, s. 9.

Overpayments by Minister

- 81.39 (1) Deemed tax.—Subject to subsection (4), where a person has
- (a) received a drawback under section 70,
- (b) received a payment under subsection 72(6) or (7), 81.14(1), 81.16(1), (4) or (5), 81.18(1) or (3) or 120(7), or

- (c) made a deduction under subsection 69(2), 73(1), (2) or (3), 74(1) or (3) or 81.18(2) or
- to which that person was not entitled or in excess of the drawback, payment or deduction to which he was entitled, the amount of the drawback, payment or deduction or the excess is deemed to be a tax under this Act payable by that person not later than the last day of the first month succeeding that in which the drawback, payment or deduction was made.
- (2) **Idem.**—Where a person has received a payment under subsection 81.38(1), (6), (7) or (8) and, on the final disposition of the appeal by further appeal or otherwise, it is determined that the person was not entitled to the payment or that the payment was in excess of the payment to which he was entitled, the amount of the payment or the excess is deemed to be a tax under this Act payable by that person not later than the last day of the first month succeeding that in which the appeal was finally disposed of.
- (3) **Idem.**—Where a person has received a payment under subsection 81.38(4), (6), (7) or (8) and, on the final disposition by further appeal or otherwise of the appeal referred to in subsection 81.38(1) on the basis of which the payment was made, it is determined that the person was not entitled to the payment or that the payment was in excess of the payment to which he was entitled, the amount of the payment or the excess is deemed to be a tax under this Act payable by that person not later than the last day of the first month succeeding that in which the appeal was finally disposed of.
- (4) **Idem.**—Where a person is liable to pay an amount under subsection 68.15(3), 68.16(4) or 68.21(3), that amount is deemed to be a tax under this Act payable by that person not later than the last day of the first month succeeding that in which the liability arose.
- (5) **Penalty and interest for default.**—On default of payment of any tax payable under subsection (1) or (4) within the time prescribed therefor, the person liable to pay the tax shall pay, in addition to the amount of the default, a penalty of one-half of one per cent and interest at the prescribed rate, in respect of each month or fraction of a month between the expiration of that time and the day on which the total tax, penalty and interest is paid, calculated on the total tax, penalty and interest outstanding in that month.
- (6) Interest.—A person liable to pay tax under subsection (2) or (3), in addition to the amount of the tax, shall pay, not later than the last day on which the tax is payable, interest at the prescribed rate, in respect of each month or fraction of a month beginning with the first month succeeding that in which the amount constituting the tax was sent to that person and ending with the month in which the appeal was finally disposed of, calculated on the total tax and interest outstanding in that month.
- (7) **Penalty and interest for default.**—On default of payment of any tax payable under subsection (2) or (3) or interest payable under subsection (6) within the time prescribed therefor, the person liable to pay the tax or interest shall pay, in addition to the amount of the default, a penalty of one-half of one per cent and interest at the prescribed rate, in respect of each month or fraction of a month between the expiration of that time and the day on which the total tax, penalty and interest is paid, calculated and the total tax, penalty and interest outstanding in that month.
- (8) **Time for paying penalty and interest.**—Any penalty or interest that accrues under subsection (5) or (7) shall be paid not later than the last day of the month in respect of which the penalty or interest was calculated.
- (9) Security.—Where the Minister holds security under section 80.1 for the payment of any tax under this section or interest under subsection (6) that is not paid within the time prescribed by this section,

- (a) interest accrues under subsection (5) or (7), as the case may be, in respect of the tax or interest from the expiration of that time; and
- (b) penalty accrues under subsection (5) or (7), as the case may be, only if the total tax, penalty and interest outstanding, as calculated in respect of each month or fraction of a month during which the default continues, exceeds the value of the security at the time it is accepted by the Minister and, if accruing, the penalty shall be calculated only on the amount of the excess.
- (10) Penalty and interest under ten dollars not payable. No penalty or interest is payable under subsection (5), (6) or (7) if the person otherwise liable to pay the penalty or interest pays all taxes payable by him under this section and, at the time of the payment, the total penalty and interest otherwise payable by that person under this section is less than ten dollars. R.S.C. 1985, c. 7 (2nd Supp.), s. 38; S.C. 1993, c. 27, s. 4.

Collection

- **82.** (1) **Debts due to Her Majesty.** -All taxes, penalties, interest or other sums payable under this Act are debts due to Her Majesty in right of Canada and are recoverable as such in the Federal Court or any other court of competent jurisdiction or in any other manner provided by this Act.
- (2) **Limitation period.**—Subject to subsection (3), no proceedings for the recovery of any tax, penalty, interest or other sum payable under this Act shall be commenced in a court more than four years after the sum becomes payable, unless the person by whom the sum is payable has been assessed for that sum under this Part.
- (3) **Exception where misrepresentation or fraud.**—Proceedings for the recovery of any tax, penalty, interest or other sum payable under this Act may be commenced in a court at any time if payment thereof was avoided by reason of a misrepresentation that is attributable to neglect, carelessness or wilful default or by reason of fraud.
- (4) **Recovery of penalties and fines for offence from corporation.** Where a penalty or fine is imposed on a corporation pursuant to a conviction for an offence under this Act and the conviction or a certified copy thereof is produced to the Federal Court, the conviction shall be registered in the Court and, when registered, has the same force and effect, and all proceedings may be taken thereon, as if the conviction were a judgment obtained in the Court for a debt of the amount of the penalty or fine and costs, if any, specified in the conviction.
- (5) **Penalties and interest on judgments.** —Where a judgment is obtained for any tax, penalty, interest or other sum payable under this Act, including a certificate registered under section 83, the provisions of this Act by virtue of which a penalty or interest is payable for failure to pay or remit the sum apply, with such modifications as the circumstances require, to failure to pay the judgment debt, and the penalty and interest are recoverable in the same manner as the judgment debt. R.S.C. 1985, c. 7 (2nd Supp.), s. 41.
- **83.** (1) **Certificate of default.**—The Minister may certify that any tax, penalty, interest or other sum payable under this Act has not been paid as and when required by this Act.
- (2) Certificate has effect on judgment. On production to the Federal Court, a certificate made under this section shall be registered in the Court and, when registered, has the same force and effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the Court for a debt of the amount specified in the certificate.
 - (3) Costs.—All reasonable costs and charges attendant on the registration of the certifi-

cate are recoverable in like manner as if they had been certified and the certificate had been registered under this section. R.S.C. 1985, c. 7 (2nd Supp.), s. 41.

- **84.** (1) **Garnishment.**—Where the Minister has knowledge or suspects that a person is or is about to become liable to make a payment to a tax debtor, the Minister may, by a notice served personally or by registered or certified mail, require that person to pay to the Receiver General, on account of the tax debtor's liability under this Act, the whole or any part of the moneys that would otherwise, within ninety days after the service of the notice, be paid or become payable to the tax debtor.
- (2) **Application of notice.**—Where the Minister has, under subsection (1), required a person to pay to the Receiver General moneys otherwise payable to a tax debtor, the requirement applies in respect of all moneys that are or will become payable by that person to the tax debtor within the ninety day period referred to in that subsection until the tax debtor's liability under this Act is satisfied.
- (3) Assignment of book debts.—Where the Minister has knowledge or suspects that a person has received, or is about to receive, an assignment of a book debt or of a negotiable instrument of title to a book debt from a tax debtor, the Minister may, by a notice served personally or by registered or certified mail, require that person to pay to the Receiver General, on account of the tax debtor's liability under this Act, out of any moneys received by that person on account of the debt within ninety days after service of the notice, an amount equal to the amount of any tax, penalty, interest or other sum payable under this Act in respect of the transaction giving rise to the debt assigned.
- (4) Failure to comply.—Any person on whom a notice is served under this section shall pay the Receiver General according to the terms thereof and, in default of payment, is liable to pay to Her Majesty an amount equal to the lesser of
 - (a) in the case of person served under subsection (1),
 - (i) the amount of the tax debtor's liability under this Act, and
 - (ii) the amount payable to the tax debtor by that person, and
 - (b) in the case of a person served under subsection (3),
 - (i) the amount of any tax, penalty, interest or other sum payable under this Act in respect of the transaction giving rise to the debt assigned to that person, and
 - (ii) the amount received by that person on account of the debt assigned after receipt of the notice.
- (5) **Penalty and interest on default in paying amount.**—Any person liable to pay an amount under subsection (4) shall pay, in addition to that amount, a penalty of one-half of one per cent and interest at the prescribed rate, in respect of each month or fraction of a month between the first day of the month following the month in which the default occurs and the day on which the total amount, penalty and interest is paid, calculated on the total amount, penalty and interest outstanding in that month or fraction of a month.
- (6) **Time for paying penalty or interest.**—A person who is liable to pay penalty or interest under subsection (5) shall pay the penalty or interest not later than the last day of the month in respect of which the penalty or interest was calculated.
- (7) **Application of payments.**—Any moneys paid by a person pursuant to subsection (4) or (5) shall, in addition to being applied to that person's liability under this section, be applied on account of the tax debtor's liability under this Act.
 - (8) Receipt of Minister.—The receipt of the Minister for moneys paid as required by

subsection (1) or, in default thereof, by subsection (4) or (5) is a good and sufficient discharge of the liability to the tax debtor to the extent of the amount set out in the receipt.

- (9) **Definition of "tax debtor".** —In this section, "tax debtor" means a person by whom any tax, penalty, interest or other sum is payable under this Act. R.S.C. 1985, c. 15 (1st Supp.), s. 29; R.S.C. 1989, c. 7 (2nd Supp.), ss. 39, 41; R.S.C. 1985, c. 42 (2nd Supp.), s. 10; R.S.C. 1985, c. 12 (4th Supp.), s. 35.
- **85. Retention by deduction or set-off.** Where a person is indebted to Her Majesty in right of Canada under this Act, the Minister may require the retention, by way of deduction or set-off, out of any amount that may be or become payable to that person by Her Majesty in right of Canada, of such amount as the Minister may specify. R.S.C. 1985, c. 15 (1st Supp.), s. 29; R.S.C. 1985, c. 7 (2nd Supp.), s. 41.
- **86.** (1) Exclusion of penalties and fines for offences.—Subsections 82(3) and (5) and sections 83 to 85 do not apply in respect of any penalty or fine imposed pursuant to a conviction for an offence under this Act.
- (2) **Restriction on certificate of default.**—The Minister shall not certify under section 83 that a sum has not been paid, unless the person by whom the sum is payable has been assessed for that sum under this Part.
 - (3) **Restriction on garnishment and retention.** —The Minister shall not
 - (a) serve a notice under section 84 in respect of a sum payable under this Act, or
 - (b) require under section 85 the retention of an amount in respect of a sum payable under this Act,

unless the person by whom the sum is payable has been assessed for that sum under this Part or a judgment against that person for the payment of that sum has been rendered by a court of competent jurisdiction.

- (4) **Delay where assessment.** -Where a person has been assessed for any sum payable under this Act, otherwise than pursuant to subsection 81.15(4) or 81.38(1), the Minister shall not, for the purpose of collecting that sum,
 - (a) commence legal proceedings in a court,
 - (b) make a certificate under section 83.
 - (c) serve a notice under section 84, or
 - (d) require under section 85 the retention of an amount

before ninety days after the day on which the notice of assessment is sent to that person.

- (5) **Delay where objection.** Where a person has served a notice of objection under section 81.15, otherwise than pursuant to section 81.33, the Minister shall not, for the purpose of collecting the sum in controversy, take any of the actions described in paragraphs (4)(a) to (d) before ninety days after the day on which the notice of decision is sent to that person.
- (6) **Delay where appeal.**—Where a person has appealed to the Tribunal or the Federal Court-Trial Division under this Part, otherwise than pursuant to section 81.33, in respect of an assessment, the Minister shall not, for the purpose of collecting the sum in controversy, take any of the actions described in paragraphs (4)(a) to (d),
 - (a) where the appeal is to the Tribunal, before the day on which a copy of the decision of the Tribunal is sent to that person or that person discontinues the appeal; and
 - (b) where the appeal is to the Federal Court-Trial Division, before the day on which the judgment of the Court is rendered or that person discontinues the appeal.

- (7) **Delay where reference.**—Where a person is named in a reference under section 81.36, agrees to a reference under section 81.37 or appears as a party at the hearing of any such reference, the Minister shall not, for the purpose of collecting any sum for which that person has been assessed and of which the liability for payment will be affected by the determination of the question, take any of the actions described in paragraphs (4)(a) to (d) before the day on which the question is determined by the Court.
- (8) **Delay where agreement.**—Notwithstanding subsections (1) to (7), where a person has served a notice of objection under section 81.15 or has appealed to the Tribunal or the Federal Court—Trial Division under this Part, otherwise than pursuant to section 81.33, in respect of an assessment and agrees in writing with the Minister to delay proceedings on the objection or appeal until a decision or judgment is rendered in another action before the Tribunal, the Federal Court or the Supreme Court of Canada in which the issue is the same or substantially the same as that raised in the objection or appeal of that person, the Minister may take any of the actions described in paragraphs (4)(a) to (d) for the purpose of collecting any sum for which that person has been assessed determined in a manner consistent with the decision or judgment of the Tribunal or Court in the other action at any time after the Minister notifies that person in writing that such decision or judgment has been rendered.
- (9) **Exception.**—Subsections (2) and (3) do not apply in respect of any amount deemed to be a tax by subsection 81.39(2) or (3). R.S.C. 1985, c. 15 (1st Supp.), s. 30; R.S.C. 1985, c. 7 (2nd Supp.), s. 41; R.S.C. 1985, c. 47 (4th Supp.), s. 52.
- 87. (1) Collection in jeopardy.—Notwithstanding section 86, where it may reasonably be considered that the collection of any sum for which a person has been assessed would be jeopardized by a delay under that section and the Minister has, by a notice served personally or by registered or certified mail, so advised that person and directed him to pay that sum or any part thereof, the Minister may forthwith take any of the actions described in paragraphs 86(4)(a) to (d) with respect to that sum or part.
- (2) **Application to vacate direction.**—Any person on whom a direction is served under subsection (1) may
 - (a) on three days notice of motion to the Deputy Attorney General of Canada, apply to a judge of a superior court having jurisdiction in the province in which that person resides or to a judge of the Federal Court for an order fixing a day, not earlier than fourteen days nor later than twenty-eight days after the date of the order, and place for the determination of the question whether the direction was justified in the circumstances;
 - (b) serve a copy of the order on the Deputy Attorney General of Canada within six days after the day on which it was made; and
 - (c) if that person has proceeded as authorized by paragraph (b), apply at the appointed time and place for an order determining the question.
- (3) Time for application.—An application to a judge under paragraph (2)(a) shall be made
 - (a) within thirty days after the day on which the direction under subsection (1) was served; or
 - (b) within such further time as the judge, on being satisfied that the application was made as soon as circumstances permitted, may allow.
- (4) **Hearing in private.**—An application to a judge under paragraph (2)(c) may, on request of the applicant, be heard in private if the applicant establishes to the satisfaction of the judge that the circumstances of the case justify proceedings being held in private.

- (5) **Burden to justify direction.**—On the hearing of an application under paragraph (2)(c), the burden of justifying the direction is on the Minister.
- (6) **Disposition of application.**—On an application under paragraph (2)(c), the judge shall determine the question summarily and may confirm, vacate or vary the direction and make such other order as he considers appropriate.
- (7) **Continuation by another judge.** Where the judge to whom an application has been made under paragraph (2)(a) cannot for any reason act or continue to act in the application under paragraph (2)(c), the application under paragraph (2)(c) may be made to another judge.
- (8) Costs.—No costs may be awarded by a judge on the disposition of an application under subsection (2). R.S.C. 1985, c. 15 (1st Supp.), s. 31; R.S.C. 1985, c. 7 (2nd Supp.), s. 41.
- **88–94.** [Amended R.S.C. 1985, c. 15 (1st Supp.), ss. 32, 33, 34 and R.S.C. 1985, c. 7 (2nd Supp.), s. 40; repealed R.S.C. 1985, c. 7 (2nd Supp.), s. 41.]
- **95.** (1) **Application of penalties and fines.**—The amount of all penalties and fines under this Act belong to Her Majesty in right of Canada for the public uses of Canada and form part of the Consolidated Revenue Fund.
- (2) **Application of penalty on account of tax.** Where a penalty calculated by reference to the amount of the tax that should have been paid or collected or the amount of stamps that should have been affixed or cancelled is imposed and recovered under or pursuant to this Act, the Minister may direct that the amount thereof or any portion thereof be applied on account of the tax that should have been paid or collected or the indebtedness arising out of the failure to affix or cancel the stamps, R.S.C. 1985, c. 7 (2nd Supp.), s. 42.
- **96.** (1) **Penalties for failure to pay or collect taxes or affix stamps.**—Every person who, being required, by or pursuant to this Act, to pay or collect taxes or other sums, or to affix or cancel stamps, fails to do so as required is guilty of an offence and, in addition to any other punishment or liability imposed by law for that failure, is liable on summary conviction to a fine of
 - (a) not less than the aggregate of twenty-five dollars and an amount equal to the tax or other sum that he should have paid or collected or the amount of stamps that he should have affixed or cancelled, as the case may be, and
 - (b) not more than the aggregate of one thousand dollars and an amount equal to the tax or other sum or amount of stamps, as the case may be;
- and in default of payment of the fine to imprisonment for a term of not less than thirty days and not more than twelve months.
- (2) **Punishment for contravention.** Every person who contravenes any of the provisions of this Act or of a regulation made by the Minister under this Act for which no other punishment is provided is liable on summary conviction to a fine of not less than fifty dollars and not more than one thousand dollars.
- (3) Officers, etc., of corporations.—Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in the commission of the offence is a party to and guilty of the offence and is liable on summary conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted. R.S.C. 1985, c. 7 (2nd Supp.), s. 43.
- **97.** (1) **Failing to file return.** —Every person required, by or pursuant to any Part except Part I, to file a return, who fails to file the return within the time it is required to be filed, is

guilty of an offence and liable to a fine of not less than ten dollars and not more than one hundred dollars.

- (2) False or deceptive statements.—When
- (a) a return is filed as required by or pursuant to any Part except Part I, or
- (b) an application is made under any of sections 68 to 70,

every person who makes, assents to or acquiesces in the making of, false or deceptive statements in the return or application is guilty of an offence and liable on summary conviction to a fine of

- (c) not less than the aggregate of one hundred dollars and an amount equal to
 - (i) double the amount of the tax that should have been paid in or in respect of the period covered by the return, or
 - (ii) double the amount of the tax or other sum that he obtained and accepted by reason of the application, and
- (d) not more than the aggregate of one thousand dollars and an amount equal to double the amount of the tax or other sum,

and in default of payment of the fine to imprisonment for a term of not more than twelve months.

- (3) [Repealed] R.S.C. 1985, c. 15 (1st Supp.), s. 35; R.S.C. 1985, c. 7 (2nd Supp.), s. 44; R.S.C. 1985, c. 12 (4th Supp.), s. 36.
- 97.1 Offence of selling in another province tobacco marked for sale in Ont. or N.B.— Where manufactured tobacco has been marked or stamped in accordance with a statute of the Province of Ontario or New Brunswick to indicate that the manufactured tobacco is intended for sale in that province, every person who sells or offers for sale the manufactured tobacco to a consumer in any other province is guilty of an offence and is liable on summary conviction to a fine of not less than \$1,000 and not more than the greater of \$1,000 and triple the amount by which
 - (a) the excise tax that would be imposed under section 23 in respect of the manufactured tobacco if the applicable rates of excise tax were the rates set out in paragraphs 1(f), 2(d) and 3(e) of Schedule II

exceeds

- (b) the excise tax that was imposed under section 23 in respect of the manufactured tobacco. S.C. 1994, c. 29, s. 10.
- 97.2 Offence of selling in another province tobacco marked for sale in Quebec.—Where cigarettes or tobacco sticks have been marked or stamped in accordance with a statute of the Province of Quebec to indicate that they are intended for sale in that province, every person who sells or offers for sale the cigarettes or tobacco sticks to a consumer in any other province is guilty of an offence and is liable on summary conviction to a fine of not less than \$1,000 and not more than the greater of \$1,000 and triple the amount by which
 - (a) the excise tax that would be imposed under section 23 in respect of the cigarettes or tobacco sticks if the applicable rate of excise tax were the rate set out in paragraph 1(f) or 2(d) of Schedule II

exceeds

(b) the excise tax that was imposed under section 23 in respect of the cigarettes or tobacco sticks. S.C. 1994, c. 29, s. 10.

- 97.3 Offence of selling in another province tobacco marked for sale in N.S..—Where manufactured tobacco, other than tobacco sticks, has been marked or stamped in accordance with a statute of the Province of Nova Scotia to indicate that the manufactured tobacco is intended for sale in that province, every person who sells or offers for sale the manufactured tobacco to a consumer in any other province is guilty of an offence and is liable on summary conviction to a fine of not less than \$1,000 and not more than the greater of \$1,000 and triple the amount by which
 - (a) the excise tax that would be imposed under section 23 in respect of the manufactured tobacco if the applicable rates of excise tax were the rates set out in paragraphs 1(f) and 3(e) of Schedule II

exceeds

- (b) the excise tax that was imposed under section 23 in respect of the manufactured tobacco, S.C. 1994, c. 29, s. 10.
- 97.4 (1) Definitions.—In this section,
- "on-reserve retailer".— "on-reserve retailer" means a retailer on a reserve in the Province of Ontario who is authorized under the *Tohacco Tax Act*, R.S.O. 1990, c. T.10, to sell black stock eigarettes, in the ordinary course of the retailer's business, to Indian consumers in the Province of Ontario:
- "reserve".—"reserve" means a reserve as defined in subsection 2(1) of the *Indian Act* or an Indian settlement as defined in section 2 of the *Indians and Bands on certain Indian Settlements Remission Order*;
- "supplier".—"supplier" means a wholesaler who has a permit under section 9 of the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to purchase and sell black stock cigarettes.
- (2) Offence of unauthorized sale of tobacco intended for Indian reserve.—Every person who sells or offers for sale black stock in respect of which excise tax was imposed under section 23 at a rate provided for under paragraph 1(a), 2(a) or 3(a) of Schedule II, because of the application of subparagraph 1(a)(ii), 2(a)(ii) or 3(a)(ii) of that Schedule, to a person other than a supplier, an on-reserve retailer or an Indian consumer in the Province of Ontario is guilty of an offence and liable on summary conviction to a fine of not less than \$1,000 and not more than the greater of \$1,000 and triple the amount by which
 - (a) the excise tax that would be imposed under section 23 in respect of the black stock if the applicable rates of excise tax were the rates set out in paragraphs I(f), I(f), I(f) and I(f) of Schedule II

exceeds

- (b) the excise tax that was imposed under section 23 in respect of the black stock. S.C. 1994, c. 29, s. 10.
- 97.5 (1) Definitions.—In this section,
- "band".—"band" has the same meaning as in subsection 2(1) of the *Indian Act*:
- "council".— "council" of a band has the same meaning as in subsection 2(1) of the *Indian*Act:
- "designated retail vendor".—"designated retail vendor" means a retail vendor on a reserve in the Province of Nova Scotia who is designated in writing by the council of a band in Nova Scotia, and by the Provincial Tax Commission of the Department of Finance of the Province of Nova Scotia, as a vendor from whom Indians on the reserve may buy

manufactured tobacco on which tax under the *Tobacco Tax Act*, R.S.N.S. 1989, c. 470, is not payable;

- "designated wholesale vendor".—"designated wholesale vendor" means a wholesale vendor who has a wholesale vendor's permit under the *Tobacco Tax Act*, R.S.N.S. 1989, c. 470, for the sale of black stock to designated retail vendors;
- "reserve".—"reserve" means a reserve as defined in subsection 2(1) of the *Indian Act*.
- (2) Offence of unauthorized sale of tobacco intended for Indian reserve.—Every person who sells or offers for sale black stock in respect of which excise tax was imposed under section 23 at a rate provided for under paragraph 1(c) or 3(b) of Schedule II, because of the application of subparagraph 1(c)(ii) or 3(b)(ii) of that Schedule, to a person other than a designated wholesale vendor, a designated retail vendor or an Indian consumer on a reserve in Nova Scotia is guilty of an offence and liable on summary conviction to a fine of not less than \$1,000 and not more than the greater of \$1,000 and triple the amount by which
 - (a) the excise tax that would be imposed under section 23 in respect of the black stock if the applicable rates of excise tax were the rates set out in paragraphs 1(f) and 3(e) of Schedule II

exceeds

- (b) the excise tax that was imposed under section 23 in respect of the black stock. S.C. 1994, c. 29, s. 10.
- 98. (1) Books and records.—Every person who
- (a) is required, by or pursuant to this Act, to pay or collect taxes or other sums or to affix or cancel stamps, or
- (b) makes an application under any of sections 68 to 70,

shall keep records and books of account in English or French at that person's place of business in Canada in such form and containing such information as will enable the amount of taxes or other sums that should have been paid or collected, the amount of stamps that should have been affixed or cancelled or the amount, if any, of any drawback, payment or deduction that has been made or that may be made to or by that person, to be determined.

- (2) **Keeping of records and books of account.**—Every person required by subsection (1) to keep records and books of account shall keep those records and books of account and every account and voucher necessary to verify the information contained therein until the expiration of six years from the end of the calendar year in respect of which those records and books of account are kept or until written permission for their prior disposal is given by the Minister.
- (2.1) **Idem.**—Notwithstanding subsection (2), where a person required by subsection (1) to keep records and books of account serves a notice of objection under section 81.15 or 81.17 or is a party to an appeal under this Part, he shall retain those records and books of account and every account and voucher necessary to verify the information therein until the objection or appeal has been finally disposed of by appeal or otherwise.
- (3) **Inspection.**—Every person required by subsection (1) to keep records and books of account shall, at all reasonable times, make the records and books of account and every account and voucher necessary to verify the information therein available to officers of the Department and other persons thereunto authorized by the Minister and give them every facility necessary to inspect the records, books, accounts and vouchers. R.S.C. 1985, c. 15 (1st Supp.), s. 36; R.S.C. 1985, c. 7 (2nd Supp.), s. 45.

- **98.1 Inspection.**—Every person who is authorized under a statute of the Province of Ontario, Quebec, Nova Scotia. New Brunswick or Prince Edward Island to sell manufactured tobacco in the province to a purchaser who is authorized under a statute of the province to retail manufactured tobacco in the province shall, at all reasonable times, make the person's records and books of account and the records and vouchers necessary to verify the information in them available to officers of the Department, and to other persons authorized by the Minister for the purpose of this section, for any purpose relating to the administration or enforcement of this Act and give them every facility necessary to inspect the records, books, accounts and vouchers for that purpose. S.C. 1994, c. 29, s. 11.
- **98.2 Inspection.**—Every person who has sold tax-paid manufactured tobacco (as defined in subsection 68.162(1)) or tax-paid cigarettes (as defined in subsection 68.163(1) or 68.164(1)) to a purchaser for resale shall, at all reasonable times, make the person's records and books of account and the records and vouchers necessary to verify the information in them available to officers of the Department, and to other persons authorized by the Minister for the purpose of this section, for the purpose of verifying an application by the purchaser under subsection 68.162(3), 68.163(3) or 68.164(3) and give them every facility necessary to inspect the records, books, accounts and vouchers for that purpose. S.C. 1994, c. 29, s. 11.
- **99.** (1) **Provision of documents may be required.**—Subject to section 102.1, the Minister may, for any purpose related to the administration or enforcement of this Act, by a notice served personally or by registered or certified mail, require that any person provide any book, record, writing or other document or any information or further information within such reasonable time as may be stipulated in the notice.
- (2) **Offence.**—Every person who fails to comply with a notice under subsection (1) is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to
 - (a) a fine of not less than two hundred dollars and not more than ten thousand dollars; or
 - (b) both a fine described in paragraph (a) and imprisonment for a term not exceeding six months. R.S.C. 1985, c. 15 (1st Supp.), s. 37; R.S.C. 1985, c. 7 (2nd Supp.), s. 46.
- **100.** (1) **Order for compliance.** —Where a person is found guilty of an offence under subsection 99(2) for failing to comply with a notice, the court may make such order as it deems appropriate to enforce compliance with the notice.
- (1.1) **Copies.**—Where any record, book, account, voucher, writing or other document has been inspected or provided under sections 98 and 99, the person by whom it was inspected, or to whom it was provided, and any officer of the Department may make, or cause to be made, one or more copies thereof.
- (2) Where records or books not adequate.—Where a person required by subsection 98(1) to keep records or books of account has not, in the opinion of the Minister, kept adequate records or books of account, the Minister may prescribe the form of, and the information to be contained in, records or books of account to be kept by that person under that subsection.
- (3) Where records or books not kept as required.—Where the form of, or the information to be contained in, records or books of account to be kept by a person has been prescribed under subsection (2), and where that person fails to keep those records or books of account as required, that person is guilty of an offence and hable on summary conviction to a fine of not less than twenty-five dollars and not more than one thousand dollars and in default of payment of the fine to a term of imprisonment of not less than two months and not more than twelve months.

- (4) Failure to make records and books available.—Every person who fails to comply with subsection 98(3) and every person who in any way prevents or attempts to prevent an officer of the Department or an authorized person from having access to, or from inspecting, records or books of account kept pursuant to subsection 98(1) is guilty of an offence and liable on summary conviction to a fine of not less than two hundred dollars and not more than two thousand dollars or to imprisonment for a term of not more than six months or to both fine and imprisonment.
- (5) **Failure to make records and books available.**—Every person who fails to comply with section 98.1 or 98.2 is guilty of an offence and liable on summary conviction to a fine of not less than \$200 and not more than \$2,000 or to imprisonment for a term of not more than 6 months or to both fine and imprisonment. R.S.C. 1985, c. 7 (2nd Supp.), s. 47; S.C. 1994, c. 29, s. 12.
- 101. [Amended R.S.C. 1985, c. 15 (1st Supp.), s. 38; repealed R.S.C. 1985, c. 7 (2nd Supp.), s. 48.]
 - 102. Destroying records and making false entries.—Every person who
 - (a) destroys, alters, or mutilates records or books of account kept in respect of any period pursuant to subsection 98(1) to evade paying a tax or otherwise to evade compliance with this Act or to assist any other person to evade paying a tax or otherwise to evade compliance with this Act, or
 - (b) makes, assents to or acquiesces in the making of, false or deceptive entries or omits, assents to or acquiesces in the omission, to enter a material particular in books or records of account required to be kept in respect of any period by subsection 98(1),

is guilty of an offence and liable on summary conviction to a fine of

- (c) not less than the aggregate of one hundred dollars and an amount equal to double the amount of the taxes that should have been paid or collected or the amount of stamps that should have been affixed or cancelled, as the case may be, in respect of that period, and
- (d) not more than the aggregate of one thousand dollars and an amount equal to double the amount of the taxes or stamps referred to in paragraph (c),

and in default of payment of the fine, to imprisonment for a term of not less than three months and not more than twelve months.

- **102.1** (1) **Unnamed persons.**—The Minister shall not serve a notice under subsection 99(1) with respect to an unnamed person or a group of unnamed persons unless the Minister has been authorized to do so under subsection (2).
- (2) **Authorization order.**—On an *ex parte* application by the Minister, a judge may, subject to such conditions as the judge considers appropriate, authorize the Minister to serve a notice under subsection 99(1) with respect to an unnamed person or a group of unnamed persons if the judge is satisfied by the information on oath that
 - (a) the person or group is ascertainable;
 - (b) the notice would be served in order to verify compliance by the person or group with any duty or obligation of that person or of persons in that group under this Act;
 - (c) there is a reasonable probability that the person or one or more persons in the group may have failed or may be likely to fail to provide information required by the notice to be provided; and
 - (d) the document or information is not more readily available otherwise.
 - (3) Reference to authorization.—Where authorization to serve a notice is granted under

subsection (2), the notice shall refer to the authorization and the conditions, if any, imposed by the judge in connection therewith.

- (4) **Review of authorization.**—Where authorization to serve a notice is granted under subsection (2), any person on whom the notice is served may, within fifteen days after being served with the notice, apply to the judge who granted the authorization or, where that judge is unable to act, to another judge of the same court, for a review of the authorization.
- (5) **Powers on review.**—A judge to whom an application is made under subsection (4) may
 - (a) cancel the authorization if the judge is not satisfied that the conditions referred to in paragraphs (2)(a) to (d) have been met; or
 - (b) confirm or vary the authorization if the judge is satisfied that those conditions have been met. S.C. 1990, c. 45, s. 12.
- (6) **Definition of "judge".**—In this section, "judge" means a judge of a superior court having jurisdiction in the province where the matter arises or a judge of the Federal Court. R.S.C. 1985, c. 7 (2nd Supp.), s. 49.
- **103. Application of** *Customs Act*.—Where a tax is payable under this Act on the importation of any goods into Canada, the *Customs Act* is applicable in the same way and to the same extent as if that tax were payable under the *Customs Tariff*. R.S.C. 1985, c. 1 (2nd Supp.), s. 196.

Service

- 104. (1) Service.—Except as otherwise provided in this Act, where a notice or other document is required or authorized by this Act to be sent to a person, other than the Minister or the Deputy Minister or the Tribunal, the notice or document shall be sent to that person by prepaid mail addressed to him at his latest known address or by being served personally on that person.
- (2) **Presumption.**—Where a person referred to in subsection (1) carries on business under a name or style other than his own name, the notice or document may be addressed to the name or style under which that person carries on business and, in the case of personal service, is deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee.
- (3) **Idem.**—Where a person referred to in subsection (1) carries on business in partnership, the notice or document may be addressed to the name of the partnership and, in the case of personal service, is deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership. R.S.C. 1985, c. 15 (1st Supp.), s. 39; R.S.C. 1985, c. 7 (2nd Supp.), s. 50; R.S.C. 1985, c. 47 (4th Supp.), s. 52.

Evidence

- 105. (1) Proof of service by registered or certified mail. Where a notice or other document under this Act or the regulations is sent by registered or certified mail, an affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out
 - (a) that the officer has knowledge of the facts in the particular case.

- (b) that such a notice or document was sent by registered or certified mail on a named day to the person to whom it was addressed, indicating such address, and
- (c) that the officer identifies as exhibits annexed to the affidavit the postal certificate or registration or proof of delivery, as the case may be, of the notice or document or a true copy of the relevant portion thereof and a true copy of the notice or document,

is evidence of the sending and of the notice or document.

- (2) **Proof of personal service.**—Where a notice or other document under this Act or the regulations is served personally, an affidavit of an officer of the Department, sworn before a commissioner or other person authorized to make affidavits, setting out
 - (a) that the officer has knowledge of the facts in the particular case,
 - (b) that such a notice or document was served personally on a named day on the person to whom it was directed, and
 - (c) that the officer identifies as an exhibit annexed to the affidavit a true copy of the notice or document.

is evidence of the personal service and of the notice or document.

- (3) **Proof of failure to comply.**—Where a person is required by this Act or the regulations to file a return or report or to pay any tax, interest, penalty or other sum, an affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out
 - (a) that the officer has charge of the appropriate records, and
 - (b) that after careful examination of the records the officer was unable to find in the particular case the return or report or the payment, as the case may be,

is evidence that, in such case, that person did not file the return or report or pay the tax, interest, penalty or other sum.

- (4) **Proof of time of compliance.**—Where a person is required or authorized by this Act or the regulations to file an application, notice, return or report or to pay any tax, interest, penalty or other sum, an affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out
 - (a) that the officer has charge of the appropriate records, and
 - (b) that after careful examination of the records the officer has found that the application, notice, return or report was filed on a particular day or the payment was received on a particular day, as the case may be,

is evidence that the application, notice, return or report was filed, or the payment was received, on that day and not prior thereto.

- (5) **Proof of documents.**—An affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out
 - (a) that the officer has charge of the appropriate records, and
 - (b) that a document annexed to the affidavit is a document, or a true copy of a document, made by or on behalf of the Minister or some person exercising the powers of the Minister or by or on behalf of any other person,

is evidence of the nature and contents of the document and has the same probative force as the original document would have if it had been proven in the ordinary way.

- (6) **Proof of no objection.**—An affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out
 - (a) that the officer has charge of the appropriate records,
 - (b) that the officer has knowledge of the practice of the Department,
 - (c) that an examination of the records shows that a notice of determination or a notice of assessment was sent to a person on a named day pursuant to this Act, and
 - (d) that after careful examination of the records the officer was unable to find that a notice of objection to the determination or assessment was received within the time limited therefor,

is evidence of the statements contained therein.

- (7) **Proof of no assignment.** –An affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out
 - (a) that the officer has charge of the appropriate records, and
 - (b) that after careful examination of the records the officer was unable to find that a notice of assignment of the right to institute proceedings under this Act was received within the time limited therefor,

is evidence of the statements contained therein.

- (8) **Proof of licence.** —An affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out
 - (a) that the officer has charge of the appropriate records, and
 - (b) that after careful examination of the records the officer has found that during a stated period a person was the holder of a licence granted under this Act,

is evidence of the statements contained therein.

- (9) **Presumption.**—Where evidence is offered under this section by an affidavit from which it appears that the person making the affidavit is an officer of the Department, it is not necessary to prove his signature or that the person is such an officer nor is it necessary to prove the signature or official character of the person before whom the affidavit was sworn. R.S.C. 1985, c. 7 (2nd Supp.), s. 50.
- 106. (1) Evidence of filing. -In any proceedings under or in respect of this Act or the regulations, the production of a return, report, certificate, statement or answer required by or under this Act or the regulations, purporting to have been made, signed or filed by or on behalf of a person, is, in the absence of evidence to the contrary, proof that the return, report, certificate, statement or answer was made, signed or filed by or on behalf of that person.
- (2) Evidence of document. —In any proceedings under or in respect of this Act or the regulations,
 - (a) a document purporting to be, or purporting to be a copy of or an extract from a record, book, account, voucher, writing, document or thing inspected, provided or produced pursuant to section 98, 99 or 107 and purporting to be certified by the person by whom it was inspected or to whom it was provided or produced or by an officer of the Department, and
 - (b) a document purporting to be certified by an officer of the Department and setting out the amount of any tax, interest, penalty or other sum paid or payable by any named person or the amount of any payment under this Act paid or payable to any named person

is evidence of the facts appearing in the document without proof of the signature or official

character of the person appearing to have signed the certificate. R.S.C. 1985, c. 7 (2nd Supp.), s. 50.

- 106.1 (1) Presumption.—Every document purporting to be an order, direction, notice, certificate, requirement, decision, determination, assessment, discharge of mortgage or other document and purporting to have been executed under, or in the course of the administration or enforcement of, this Act or the regulations over the name in writing of the Minister, the Deputy Minister or an officer authorized by the Minister to exercise his powers or perform his duties or functions under this Act shall be deemed to be a document signed, made and issued by the Minister, Deputy Minister or officer, unless called into question by the Minister or by some person acting for him or Her Majesty.
- (2) **Idem.**—For the purposes of this Act, a notice referred to in subsection 72(6), 81.13(1), 81.15(5) or 81.17(5) that is sent by mail shall, in the absence of any evidence to the contrary, be deemed to have been sent on the day appearing from the notice to be the date thereof, unless called into question by the Minister or by some person acting for him or Her Majesty.
- (3) **Idem.**—Where a notice referred to in subsection 72(6), 81.13(1), 81.15(5) or 81.17(5) is sent by the Minister as required by this Act, the determination, assessment or decision to which the notice relates shall be deemed to have been made on the day on which the notice is sent.
- (4) **Idem.**—Every form purporting to be a form prescribed by the Minister under this Act shall be deemed to be a form prescribed by the Minister under this Act, unless called into question by the Minister or by some person acting for him or Her Majesty. R.S.C. 1985, c. 7 (2nd Supp.), s. 50.
- **107.** (1) **Inquiries.**—Any person designated by the Minister may conduct any inquiry or investigation in matters relating to this Act, and any person so authorized has all the powers and authority of a commissioner appointed under Part I of the *Inquiries Act*.
- (2) **Summoning witnesses.**—A person designated to conduct an inquiry or investigation under subsection (1) may, for the purpose thereof, issue a summons to any person in any part of Canada requiring him to appear at the time and place mentioned therein, to testify to all matters within his knowledge relating to the subject-matter of the inquiry or investigation and to bring with him and produce any document, book or paper that he has in his possession or under this control relating to the subject-matter of the inquiry or investigation.
- (3) **Travel expenses.**—Reasonable travel expenses shall be paid to any person summoned under subsection (2) at the time of the service of the summons.
 - (4) Punishment.—Every person who
 - (a) fails, without valid excuse, to attend an inquiry or investigation as required under this section.
 - (b) fails to produce any document, book or paper in his possession or under his control, as required under this section, or
 - (c) at any inquiry or investigation under this section
 - (i) refuses to be sworn, to affirm or to declare, as the case may be, or
 - (ii) refuses to answer any proper question put to him by the person conducting the inquiry or investigation,

is guilty of an offence and is liable on summary conviction to a fine not less than twenty dollars and not more than four hundred dollars.

108. Offence of evasion.—Every one who wilfully attempts in any manner to evade or

defeat any tax imposed by this Act is guilty of an offence and liable on summary conviction to a fine not exceeding twelve thousand dollars or to imprisonment for a term not exceeding twelve months or to both.

- 109. Penalty for collecting excess sums.—Every one liable under this Act to pay to Her Majesty any of the taxes imposed by this Act, or to collect the taxes on Her Majesty's behalf, who collects, under colour of this Act, any sum of money in excess of such sum as he is hereby required to pay to Her Majesty shall pay to Her Majesty all moneys so collected and shall in addition be liable to a penalty not exceeding five hundred dollars.
- 110. Time limited for prosecution.—An information or complaint under the provisions of the *Criminal Code* relating to summary convictions, in respect of an offence under this Act, may be laid or made on or before a day three years from the time when the matter or the information or complaint arose or within one year from the day on which evidence, sufficient in the opinion of the Minister to justify a prosecution for the offence, came to his knowledge, and the Minister's certificate as to the day on which the evidence came to his knowledge is conclusive evidence thereof.
- 111. (1) Action against officers.—No writ shall be issued against, nor any process served on, any officer for any thing done or purporting to be done in the exercise of his duty as an officer until one month after notice in writing has been served on him, in which notice shall be clearly and explicitly stated the cause of action, the name and place of residence of the person who intends to bring action and the name of his attorney, solicitor or agent.
- (2) **Evidence.**—No evidence of any cause of action shall be produced except of such cause of action as is contained in the notice, and no verdict or judgment shall be given for the plaintiff, unless he proves on the trial that the notice was given, in default of which proof the defendant is entitled to a verdict or judgment and costs.
- 112. (1) Time and place of action.—Every action referred to in subsection 111(1) shall be brought within three months after the cause thereof arose and shall be laid and tried in the place or district where the acts complained of were committed.
- (2) **Defendant's plea.**—The defendant in an action may plead the general issue and give the special matter in evidence.
- (3) Costs. If the plaintiff in an action is non-suited or discontinues the action, or if, on demurrer or otherwise, judgment is given against the plaintiff, the defendant may recover costs and have such remedy for the costs as any defendant has in other cases where costs are given.
- 113. Officer may tender amends. Any officer or person against whom any such action is brought under this Act on account of anything done, or purporting to be done, under the authority of this Act may, within one month after the notice referred to in subsection 111(1) has been served, tender amends to the person complaining or his agent and plead the tender in bar or answer to the action, together with other pleas or defences, and if the court or jury, as the case may be, finds the amends sufficient, a judgment or verdict shall be given for the defendant, and in that case, or if the plaintiff is non-suited or discontinues his action, or judgment is given for the defendant on demurrer or otherwise, the defendant is entitled to the like costs as he would have been entitled to in case he had pleaded the general issue only, but the defendant may, by leave of the court in which the action is brought, at any time before issue is joined, pay money into court as in other actions.
- 114. If defendants acted on probable cause.—If, in any action under this Act, the court or judge before whom the action is tried certifies that the defendant or defendants in the action acted on probable cause, the plaintiff in the action is not entitled to more than twenty cents damages or to any costs of suit.

- 115. (1) Punishment.—Notwithstanding any other statute or law, the court in any prosecution, suit or proceeding under this Act has no power to impose less than the minimum punishment prescribed by this Act and the court has no power to suspend sentence.
- (2) **Information.**—An information or complaint in respect of a contravention of this Act may be for one or more offences and no information, complaint, warrant, conviction or other proceeding in respect of an offence or offences is objectionable or insufficient on the ground that it relates to two or more offences.
- 116. (1) Incorrect statements as to use.—Where a purchaser of goods from a whole-saler, producer, manufacturer or importer has incorrectly stated or certified that the goods were intended for a use rendering them exempt from tax under any provision of this Act, the wholesaler, producer, manufacturer or importer, as the case may be, is entitled to recover from the purchaser the taxes paid by him under this Act in respect of those goods.
- (2) **Idem.**—Where a purchaser of transportation by air from an air carrier has incorrectly stated or certified that the transportation by air was intended for a use rendering the transportation exempt from tax under Part II, the air carrier is entitled to recover from the purchaser the taxes paid by the air carrier under that Part in respect of that transportation by air.
- (3) **Idem.**—Where a person who acquires a taxable service from a licensee under Part II.1 or II.2 has incorrectly stated or certified that the service was intended for a use rendering the service exempt from tax under that Part, the licensee is entitled to recover from that person the taxes paid or remitted by the licensee under that Part in respect of the amount charged for the service.
- (4) Liability where purchaser's statement or certificate incorrect.—Where a manufacturer or wholesaler holding a licence granted under or in respect of Part III or VI has purchased goods from another such licensed manufacturer or licensed wholesaler and has incorrectly stated or certified that the goods were being purchased for a use or under conditions rendering the sale of the goods exempt from any tax imposed by Part III or VI,
 - (a) the purchaser and not the manufacturer or wholesaler from whom the goods were purchased is liable to pay the tax and any penalty or interest under subsection 79(1), if
 - (i) the statement or certificate is in writing, and
 - (ii) the manufacturer or wholesaler from whom the goods were purchased establishes that he acted with due care and diligence in relying on the statement or certificate of the purchaser; and
 - (b) in any other case, the purchaser and the manufacturer or wholesaler from whom the goods were purchased are jointly and severally liable to pay the tax and any penalty or interest under subsection 79(1). R.S.C. 1985, c. 15 (1st Supp.), s. 40; R.S.C. 1985, c. 7 (2nd Supp.), s. 51; R.S.C. 1985, c. 12 (4th Supp.), s. 37.

PART VIII

TRANSITIONAL.

- 117. (1) Meaning of "taxable service".—For the purposes of this section, "taxable service" means a taxable service as defined in subsection 21.1(1) and a taxable service as defined in subsection 21.22(1).
- (2) Part II.1 and II.2 tax. —Where the amount charged for a taxable service by a person providing the service is charged

- (a) after April 1991, or
- (b) after August 1990 for a period beginning after 1990,

no tax thereon shall be imposed, levied or collected under Part II.1 or II.2.

- (3) **Idem.**—Where the amount charged for a taxable service by a person providing the service is charged after August 1990 in respect of a period beginning before 1991 and ending after 1990, no tax shall be imposed or levied under Part II.1 or II.2 or collected under those Parts by the person providing the service in respect of the amount charged, to the extent that the amount charged relates to the portion of the service that is provided after 1990, S.C. 1990, c. 45, s. 12.
- 118. (1) Tax under Part VI.—No tax shall be imposed, levied or collected under Part VI on any goods
 - (a) that are sold by a licensed wholesaler and that, before 1991, have not been delivered to the purchaser of the goods, and the property in which has not, before 1991, passed to the purchaser thereof:
 - (b) the importation of which has not been accounted for under subsection 32(1), (2) or (5) of the *Customs Act* before 1991;
 - (c) that are manufactured or produced in Canada and that have not, before 1991, been delivered to a purchaser of the goods, and the property in which has not, before 1991, passed to a purchaser thereof; or
 - (d) that are retained by the manufacturer or producer thereof or by a licensed wholesaler for that person's own use after 1990 or for rental after 1990 by that person to others.
- (2) **Idem.**—Where goods sold by a licensed wholesaler are delivered after 1990 to a purchaser of the goods but property in the goods passed to the purchaser before 1991, the goods shall, for the purposes of paragraph 50(1)(c), be deemed to have been delivered to the purchaser on the day the property in the goods passed to the purchaser.
- (3) **Idem.**—Where a person is a manufacturer or producer who has, before November 1989, entered into a contract referred to in subparagraph 50(1)(a)(ii) in respect of the sale of goods of the person's manufacture or production
 - (a) no tax shall be imposed, levied or collected under Part VI in respect of instalments that become payable under that contract after 1990; and
 - (b) where an invoice issued or dated before 1991 is issued for an instalment payable under that contract after 1990, subsection 152(1) does not apply in respect of the instalment.
- (4) **Idem.**—Where a person is a manufacturer or producer who has, after October 1989, entered into a contract referred to in subparagraph 50(1)(a)(ii) in respect of the sale of goods of the person's manufacture or production and the goods have not been delivered to the purchaser, and the property therein has not passed to the purchaser, before 1991,
 - (a) no tax shall be imposed, levied or collected under Part VI in respect of instalments that become payable under that contract after 1990; and
 - (b) where an invoice issued or dated before 1991 is issued for an instalment payable under that contract after 1990, subsection 152(1) does not apply in respect of the instalment.
- (5) **Idem.**—Where a person who is a manufacturer or producer has, after October 1989, entered into a contract referred to in subparagraph 50(1)(a)(ii) in respect of the sale of goods of the person's manufacture or production and the goods have been delivered to the purchaser, or the property therein has passed to the purchaser, before 1991, any instalments that become

payable under the contract after November 1990 shall, for the purposes of this Act, be deemed to have become payable on December 31, 1990.

- (6) **Idem.**—Notwithstanding subsection (3), subsection (5) applies in respect of the instalments as set out in a contract entered into before November 1989 where any amendments or alterations to the contract that vary the timing or amounts of the instalment under the contract are made after October 1989 and before 1991, except where the amendments or alterations to the contract are reasonable to accommodate a change in the total consideration payable under the contract.
- (6.1) **Diversions after 1990.**—Where any of the events described in subsection 50(7) or (8) in respect of goods occur after 1990, no tax under Part VI shall be imposed, levied or collected under that subsection in respect of the goods.
- (7) Continuous supplies.—Where Part VI applies in respect of goods that are delivered on a continuous basis, by means of a wire, pipeline or other conduit, by a vendor who is a licensed wholesaler or the manufacturer or producer of the goods and who invoices on a regular or periodic basis, and the invoice for a sale of the goods is issued by the vendor to the purchaser after August 1990, no tax shall be imposed, levied or collected under Part VI in respect of the goods, to the extent that the goods are delivered and the property therein passes to the purchaser after 1990. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 5.
- **119.** (1) **Revocation of approval.**—Subsection 49(2) does not apply in respect of tax imposed under Part VI where an approval of an application given under subsection 48(3) is revoked after 1990. S.C. 1990, c. 45, s. 12.
- (2) Wholesaler's licence cancellation.—Subsection 56(3) does not apply in respect of tax imposed under Part VI where a licence granted under section 55 is cancelled after 1990.

Sales Tax Inventory Rebate

120. (1) Definitions.—In this section,

- "capital property".—"capital property", in respect of a person, means property that is, or that would be if the person were a taxpayer under the *Income Tax Act*, capital property of the person within the meaning of that Act, other than property described in Class 12 or 14 of Schedule II to the *Income Tax Regulations*;
- "commercial activity".—"commercial activity" of a person means a business carried on by the person (other than a business carried on by an individual without a reasonable expectation of profit), except to the extent to which the business involves the making of exempt supplies (within the meaning assigned by subsection 123(1)) by the person;
- "inventory".—"inventory" of a person as of any time means items of tax-paid goods that are described in the person's inventory in Canada at that time and that are
 - (a) held at that time for sale, lease or rental separately, for a price or rent in money, to others in the ordinary course of a commercial activity of the person, or
 - (b) building materials held at that time for use by the person in a business of constructing, renovating or improving buildings or structures carried on by the person, but not including any such goods that before that time have been incorporated into new construction or a renovation or improvement or have otherwise been delivered to a construction, renovation or improvement job site,

and that are not

(c) capital properties of the person,

- (d) held by the person for use in the construction, renovation or improvement of property that is or is to be capital property of the person, or
- (e) included in the description of any other person's inventory at that time;
- "sales tax".—"sales tax" means the consumption or sales tax imposed under Part VI;
- "tax-paid goods".—"tax-paid goods" means goods, acquired before 1991 by a person, that have not been previously written off in the accounting records of the person's business for the purposes of the *Income Tax Act* and that are, as of the beginning of January 1, 1991,
 - (a) new goods that are unused,
 - (b) remanufactured or rebuilt goods that are unused in their condition as remanufactured or rebuilt goods, or
 - (c) used goods
- and on the sale price or on the volume sold of which tax (other than tax payable in accordance with subparagraph 50(1)(a)(ii)) was imposed under subsection 50(1), was paid and is not, but for this section, recoverable.
- (2) Goods in inventory.—Where, under a contract referred to in subsection 118(3), sales tax has been paid on instalments under the contract in respect of any goods included in the purchaser's inventory and the goods have been delivered to the purchaser, or the title thereto has passed to the purchaser, before 1991, the goods shall be included in the inventory of that purchaser only to the extent of the instalments made before 1991 in respect thereof under the contract.
- (2.1) Goods not expected to be sold.—For the purposes of paragraph (a) of the definition "inventory" in subsection (1), that portion of the tax-paid goods that are described in a person's inventory in Canada at any time that can reasonably be expected to be consumed or used by the person shall be deemed not to be held at that time for sale, lease or rental.
- (3) **Rebate of sales tax.**—Subject to this section, where a person who, as of January 1, 1991, is registered under Subdivision d of Division V of Part IX has any tax-paid goods in inventory at the beginning of that day,
 - (a) where the tax-paid goods are goods other than used goods, the Minister shall, on application made by the person, pay to that person a rebate in accordance with subsections (5) and (8); and
 - (b) where the tax-paid goods are used goods, the goods shall be deemed, for the purposes of section 176, to be used tangible personal property supplied in Canada by way of sale on January 1, 1991 to the person in respect of which tax was not payable by the person and to have been acquired for the purpose of supply in the course of commercial activities of the person for consideration paid on that day equal to 50% of the amount at which the goods would be required to be valued on that date for the purpose of computing the person's income from a business for the purposes of the *Income Tax Act*.
- (3.1) **Restriction on rebate.**—Where section 178.3 applies, on January 1, 1991, to a direct seller, exclusive products of the direct seller that, but for this subsection, form part of the inventory at the beginning of that day of an independent sales contractor of the direct seller who is not a distributor in respect of whom an approval granted under subsection 178.2(4) on application made jointly with the direct seller is in effect on that day, shall be deemed, for the purposes of this section, not to form part of that inventory.
- (3.2) **Definitions.**—In subsection (3.1), "direct seller", "distributor", "exclusive product" and "independent sales contractor" have the meanings assigned by section 178.1.

- (4) **Taking of inventory.**—For the purposes of subsection (3), the inventory of a person shall be determined as of the beginning of January 1, 1991, and may be determined
 - (a) on January 1, 1991;
 - (b) where the business of the person is not open for active business on January 1, 1991, on the first day after January 1, 1991, or the last day before January 1, 1991, on which the business is open for active business; or
 - (c) on a day before or after January 1, 1991 where the Minister is satisfied that the inventory system of the person is adequate to permit a reasonable determination of the person's inventory as of January 1, 1991.
- (5) **Determination of rebate.**—Subject to subsection (8), for the purposes of subsection (3), the rebate payable to a person in respect of the person's inventory as of the beginning of January 1, 1991 is, subject to subsection 337(7), the amount determined by a prescribed method using prescribed tax factors.
- (6) **Application of Parts VI and VII.**—Parts VI and VII, other than subsection 72(7), apply in respect of an application for a rebate and of a payment of a rebate under this section as if the application were an application for a refund under section 68 and the payment were made under section 72.
- (7) **Interest on payment.**—Where a rebate is paid to a person under this section, interest at the prescribed rate shall be paid to the person beginning on the day that is the later of
 - (a) March 1, 1991, and
- (b) the day that is twenty-one days after the day the application is received by the Minister, and ending on the day the rebate is paid, and compounded monthly on the total amount of the payment and interest outstanding.
- (8) Limitation.—No rebate shall be paid under this section unless the application therefor is filed with the Minister before 1992. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 6.

New Housing Rebate

121. (1) **Definitions.**—In this section.

"estimated federal sales tax".—"estimated federal sales tax" for a residential complex means the prescribed amount in respect of the complex;

"specified residential complex".—"specified residential complex" means

- (a) a multiple unit residential complex containing more than two residential units where the construction or substantial renovation of the complex began before 1991 and subsection 191(3) did not apply and, notwithstanding subsections 191(6) and (7), would not have applied, after the construction or substantial renovation began and before 1991, to deem a supply of the complex to have been made, or
- (b) a residential condominium unit where the construction or substantial renovation of the condominium complex in which the unit is situated began before 1991 and neither subsection 191(1) nor (2) applied, after the construction or substantial renovation began and before 1991, to deem a supply of the unit to have been made;
- "specified single unit residential complex".—"specified single unit residential complex" means a residential complex (other than a floating home or a mobile home)
 - (a) that is a single unit residential complex or a multiple unit residential complex containing not more than two residential units,

- (b) the construction or substantial renovation of which began before 1991, and
- (c) that was not occupied by any individual as a place of residence or lodging after the construction or substantial renovation began and before 1991.
- (2) Rebate for specified single unit residential complex.—Where
- (a) a builder of a specified single unit residential complex
 - (i) gives possession of the complex to a person under a lease, licence or similar arrangement and thereby is deemed under subsection 191(1) or (3) to have made a taxable supply of the complex, or
 - (ii) makes a taxable supply by way of sale of the complex to an individual,
- (b) tax under Part IX is payable in respect of the supply,
- (c) the individual or person, as the case may be, first takes possession of the complex after 1990 and before 1995, and
- (d) the construction or substantial renovation of the complex is substantially completed
 - (i) before July 1991, where the individual or person, as the case may be, first takes possession of the complex before July 1991, and
 - (ii) before 1991, in any other case,

the Minister shall, subject to subsections (4) and (4.1), pay a rebate to the individual or, in the case described in subparagraph (a)(i), to the builder equal to

- (e) ½ of the estimated federal sales tax for the complex where, before April 1991, the construction or substantial renovation of the complex is substantially completed and possession of the complex is transferred, and
- (f) $\frac{1}{3}$ of the estimated federal sales tax for the complex in any other case.
- (2.1) **Liability of the builder.** —Where a rebate in respect of a residential complex is paid under subsection (2) to an individual who is not a builder of the complex, or to an assignee of the individual, and
 - (a) the builder has given to the individual or to the Minister incorrect information in writing as to the substantial completion before 1991 of the construction or substantial renovation of the complex,
 - (b) the builder knew or ought to have known that the information was incorrect, and
 - (c) the individual did not know and could not reasonably be expected to have known that the information was incorrect,

the rebate shall be deemed, for the purposes of section 81.39, to have been received by the builder as if the builder had applied therefor.

- (3) **Rebate for specified residential complex.**—Where, immediately before 1991, a builder of a specified residential complex (other than a builder of the complex to whom, because of subsection 191(5) or (6), subsections 191(1) to (4) do not apply) owned or had possession of the complex and had not transferred ownership or possession under an agreement of purchase and sale to any person who is not a builder of the complex, the Minister shall, subject to subsections (4) and (4.1), pay a rebate to the builder equal to
 - (a) where the complex is a multiple unit residential complex,
 - (i) 50% of the estimated federal sales tax for the complex, where the construction or substantial renovation of the complex was, on January 1, 1991, more than 25% completed and not more than 50% completed, and

- (ii) 75% of the estimated federal sales tax for the complex, where the construction or substantial renovation of the complex was, on January 1, 1991, more than 50% completed; and
- (b) where the complex is a residential condominium unit in a condominium complex,
 - (i) 50% of the estimated federal sales tax for the unit, where the construction or substantial renovation of the condominium complex was, on January 1, 1991, more than 25% completed and not more than 50% completed, and
 - (ii) 75% of the estimated federal sales tax for the unit, where the construction or substantial renovation of the condominium complex was, on January 1, 1991, more than 50% completed.
- (4) **Application for rebate.**—A rebate in respect of a residential complex shall not be paid under this section to a person where the person fails to apply to the Minister for the rebate in prescribed form and manner before 1995 or where a rebate under this section in respect of the complex was paid to any other person entitled thereto.
- (4.1) **Rebate based on consideration.**—Where the estimated federal sales tax for a residential complex is an amount based on the consideration, or a portion of the consideration, for a supply of the complex, a rebate in respect of the complex shall not be paid under this section to a person unless the person has applied for the rebate after tax under Part IX became payable in respect of that supply.
- (5) **Application of section 191.**—For the purposes of this section, section 191 shall be deemed to have been in force at all times before 1991.
- (6) **Application of Parts VI and VII.**—Parts VI and VII apply in respect of an application for a rebate and of a payment of a rebate under this section as if the application were an application for a refund under section 68 and the payment were made under section 72. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 7; S.C. 1994, c. 9, s. 1.
- **121.1 Application of anti-avoidance rule.**—Section 274 applies to this Part with such modifications as the circumstances require, and for that purpose every reference in that section to "an assessment, a reassessment or an additional assessment" shall be read as a reference to "an assessment, a reassessment, an additional assessment, a determination or a redetermination". S.C. 1993, c. 27, s. 8.

PART IX

GOODS AND SERVICES TAX

- 122. Application.—This Part is binding
- (a) on Her Majesty in right of Canada; and
- (b) on Her Majesty in right of a province in respect of obligations as a supplier to collect and to remit tax in respect of taxable supplies made by Her Majesty in right of the province.
- (c) [Repealed] S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 9.

DIVISION I

Interpretation

123. (1) Definitions.—In section 121, this Part and Schedules V, VI and VII,

- "admission".—"admission", in respect of a place of amusement or a seminar, an activity or an event, means a right of entry or access to, or attendance at, the place of amusement or the seminar, activity or event;
- "amount".—"amount" means money, property or a service, expressed in terms of the amount of money or the value in terms of money of the property or service;
- "assessment".—"assessment" means an assessment under this Part and includes a reassessment under this Part;
- "builder".— "builder" of a residential complex or of an addition to a multiple unit residential complex means a person who
 - (a) at a time when the person has an interest in the real property on which the complex is situated, carries on or engages another person to carry on for the person
 - (i) in the case of an addition to a multiple unit residential complex, the construction of the addition to the multiple unit residential complex,
 - (ii) in the case of a residential condominium unit, the construction of the condominium complex in which the unit is situated, and
 - (iii) in any other case, the construction or substantial renovation of the complex.
 - (b) acquires an interest in the complex at a time when
 - (i) in the case of an addition to a multiple unit residential complex, the addition is under construction, and
 - (ii) in any other case, the complex is under construction or substantial renovation,
 - (c) in the case of a mobile home or floating home, makes a supply of the home before the home has been used or occupied by any individual as a place of residence,
 - (d) acquires an interest in the complex
 - (i) in the case of a condominium complex or residential condominium unit, at a time when the complex is not registered as a condominium, or
 - (ii) in any case, before it has been occupied by an individual as a place of residence or lodging,

for the primary purpose of

- (iii) making one or more supplies of the complex or parts thereof or interests therein by way of sale, or
- (iv) making one or more supplies of the complex or parts thereof by way of lease, licence or similar arrangement to persons other than to individuals who are acquiring the complex or parts otherwise than in the course of a business or an adventure or concern in the nature of trade, or
- (e) in any case, is deemed under subsection 190(1) to be a builder of the complex.

but does not include

- (f) an individual described by paragraph (a), (b) or (d) who
 - (i) carries on the construction or substantial renovation,
 - (ii) engages another person to carry on the construction or substantial renovation for the individual, or
 - (iii) acquires the complex or interest in it,

otherwise than in the course of a business or an adventure or concern in the nature of trade.

- (g) an individual described in paragraph (c) who makes a supply of the mobile home or floating home otherwise than in the course of a business or an adventure or concern in the nature of trade, or
- (h) a person described in any of paragraphs (a) to (c) whose only interest in the complex is a right to purchase the complex or an interest in it from a builder of the complex;
- "business".—"business" includes a profession, calling, trade, manufacture or undertaking of any kind whatever, whether the activity or undertaking is engaged in for profit, and any activity engaged in on a regular or continuous basis that involves the supply of property by way of lease, licence or similar arrangement, but does not include an office or employment;
- "calendar quarter".—"calendar quarter" means a period of three months beginning on the first day of January, April, July or October in each calendar year;
- "capital property".—"capital property", in respect of a person, means property that is, or would be if the person were a taxpayer under the *Income Tax Act*, capital property of the person within the meaning of that Act, other than property described in Class 12, 14 or 44 of Schedule II to the *Income Tax Regulations*;
- "carrier".—"carrier" means a person who supplies a freight transportation service within the meaning assigned by subsection 1(1) of Part VII of Schedule VI;
- "charity".—"charity" means a registered charity or registered Canadian amateur athletic association, within the meaning of the *Income Tax Act*;
- "closely related group".—"closely related group" means a group of corporations each member of which is closely related, within the meaning assigned by section 128, to each other member of the group;
- "commercial activity".—"commercial activity" of a person means
 - (a) a business carried on by the person (other than a business carried on by an individual or a partnership, all of the members of which are individuals, without a reasonable expectation of profit), except to the extent to which the business involves the making of exempt supplies by the person,
 - (b) an adventure or concern of the person in the nature of trade (other than an adventure or concern engaged in by an individual or a partnership, all of the members of which are individuals, without a reasonable expectation of profit), except to the extent to which the adventure or concern involves the making of exempt supplies by the person, and
 - (c) the making of a supply (other than an exempt supply) by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply;
- "commercial service". "commercial service", in respect of tangible personal property, means any service in respect of the property other than
 - (a) a service of shipping the property supplied by a carrier, and
 - (b) a financial service;
- "condominium complex".—"condominium complex" means a residential complex that contains more than one residential condominium unit;
- "consideration".—"consideration" includes any amount that is payable for a supply by operation of law;
- "consideration fraction".—"consideration fraction" means 100/107:

- "consumer".—"consumer" of property or a service means a particular individual who acquires or imports the property or service for the particular individual's personal consumption, use or enjoyment or the personal consumption, use or enjoyment of any other individual at the particular individual's expense, but does not include an individual who acquires or imports the property or service for consumption, use or supply in the course of commercial activities of the individual or other activities in the course of which the individual makes exempt supplies:
- "convention".—"convention" means a formal meeting or assembly that is not open to the general public, but does not include a meeting or assembly the principal purpose of which is
 - (a) to provide any type of amusement, entertainment or recreation,
 - (b) to conduct contests or games of chance, or
 - (c) to transact the business of the convenor or attendees
 - (i) in the course of a trade show that is open to the general public, or
 - (ii) otherwise than in the course of a trade show;
- "convention facility".—"convention facility" means real property that is acquired by way of lease, licence or similar arrangement by the sponsor or organizer of a convention for use exclusively as the site for the convention;
- "cooperative corporation".—"cooperative corporation" means a cooperative housing corporation and any other cooperative corporation within the meaning assigned by subsection 136(2) of the *Income Tax Act*;
- "cooperative housing corporation".—"cooperative housing corporation" means a corporation that was incorporated, by or under a law of Canada or a province providing for the establishment of the corporation or respecting the establishment of cooperative corporations, for the purpose of making supplies by way of lease, licence or similar arrangement of residential units to its members for the purpose of their occupancy as places of residence for individuals where
 - (a) the statute by or under which it was incorporated, its charter, articles of association or by-laws or its contracts with its members require that the activities of the corporation be engaged in at or near cost after providing for reasonable reserves and hold forth the prospect that surplus funds arising from those activities will be distributed among its members in proportion to patronage,
 - (b) none of its members (except other cooperative corporations) have more than one vote in the conduct of the affairs of the corporation, and
 - (c) at least 90% of its members are individuals or other cooperative corporations and at least 90% of its shares are held by such persons;
- "courier".—"courier" has the meaning assigned by subsection 2(1) of the Customs Act:
- "credit note".—"credit note" means a credit note issued under subsection 232(3);
- "credit union".—"credit union" has the meaning assigned by subsection 137(6) of the *Income Tax Act* and includes a corporation described in subparagraph 137.1(5)(a)(i) of that Act:
- "debit note".—"debit note" means a debit note issued under subsection 232(3);
- "debt security".—"debt security" means a right to be paid money and includes a deposit of

money, but does not include a lease, licence or similar arrangement for the use of, or the right to use, property other than a financial instrument;

- "Department".—"Department" means the Department of National Revenue;
- "Deputy Minister".—"Deputy Minister" means the Deputy Minister of National Revenue;
- "document".—"document" includes money, a security and a record;
- "employee".—"employee" includes an officer;
- "employer".—"employer", in relation to an officer, means the person from whom the officer receives remuneration:
- "equity security".—"equity security" means a share of the capital stock of a corporation or any interest in or right to such a share;
- **"excisable goods"**.—"excisable goods" means any goods on which a duty of excise is imposed under the *Excise Act* or would be imposed under that Act if the goods were manufactured or produced in Canada;
- "exclusive".—"exclusive" means
 - (a) in respect of the consumption, use or supply of property or a service by a person that is not a financial institution, all or substantially all of the consumption, use or supply of the property or service, and
 - (b) in respect of the consumption, use or supply of property or a service by a financial institution, all of the consumption, use or supply of the property or service;
- "exempt supply".—"exempt supply" mean a supply included in Schedule V;
- "export".—"export" means export from Canada;
- "fair market value".—"fair market value" of property or a service supplied to a person means the fair market value of the property or service without reference to any tax excluded by section 154 from the consideration for the supply;
- "financial institution".—"financial institution", at any time, means a person who is at that time a financial institution under section 149:
- "financial instrument".—"financial instrument" means
 - (a) a debt security,
 - (b) an equity security,
 - (c) an insurance policy,
 - (d) an interest in a partnership or trust or any right in respect of such an interest,
 - (e) a precious metal,
 - (f) an option or a contract for the future supply of a commodity, where the option or contract is traded on a recognized commodity exchange,
 - (g) a prescribed instrument,
 - (h) a guarantee, an acceptance or an indemnity in respect of anything described in paragraph (a), (b), (d), (e) or (g), or
 - (i) an option or a contract for the future supply of money or anything described in any of paragraphs (a) to (h);
- "financial service".—"financial service" means
 - (a) the exchange, payment, issue, receipt or transfer of money, whether effected by the exchange of currency, by crediting or debiting accounts or otherwise,

- (b) the operation or maintenance of a savings, chequing, deposit, loan, charge or other account,
- (c) the lending or borrowing of a financial instrument,
- (d) the issue, granting, allotment, acceptance, endorsement, renewal, processing, variation, transfer of ownership or repayment of a financial instrument,
- (e) the provision, variation, release or receipt of a guarantee, an acceptance or an indemnity in respect of a financial instrument,
- (f) the payment or receipt of money as dividends (other than patronage dividends), interest, principal, benefits or any similar payment or receipt of money in respect of a financial instrument,
- (f.1) the payment or receipt of an amount in full or partial satisfaction of a claim arising under an insurance policy,
- (g) the making of any advance, the granting of any credit or the lending of money,
- (h) the underwriting of a financial instrument,
- (i) any service provided pursuant to the terms and conditions of any agreement relating to payments of amounts for which a credit card voucher or charge card voucher has been issued.
- (j) the service of investigating and recommending the compensation in satisfaction of a claim under an insurance policy where the service is supplied by an insurer or by another person who, except in the case of a claim under a marine insurance policy, is licensed under the laws of a province to provide such service,
- (j.1) the service of providing a person who supplies a service referred to in paragraph (j) in respect of property with an appraisal of the damage caused to the property, or in the case of a loss of the property, the value of the property, where the supplier of the appraisal inspects the property, or in the case of a loss of the property, the last-known place where the property was situated before the loss,
- (k) any supply deemed by subsection 150(1) or section 158 to be a supply of a financial service.
- (1) the agreeing to provide, or the arranging for, a service referred to in any of paragraphs (a) to (i), or
- (m) a prescribed service,

but does not include

- (n) the payment or receipt of money as consideration for the supply of property other than a financial instrument or of a service other than a financial service,
- (o) the payment or receipt of money in settlement of a claim (other than a claim under an insurance policy) under a warranty, guarantee or similar arrangement in respect of property other than a financial instrument or a service other than a financial service.
- (p) the service of providing advice, other than a service included in this definition because of paragraph (j) or (j,1),
- (q) the provision of management or administrative services to a corporation, partnership or trust the principal activity of which is the investing of funds on behalf of shareholders, members or other persons,
- (r) a professional service provided by an accountant, actuary, lawyer or notary in the course of a professional practice,

- (r.1) the arranging for the transfer of ownership of shares of a cooperative housing corporation,
 - (s) any service the supply of which is deemed under this Part to be a taxable supply, or
 - (t) a prescribed service;
- "fiscal month".—"fiscal month" of a person means a period that is determined under section 243 to be the fiscal month of the person;
- "fiscal quarter".—"fiscal quarter" of a person means a period that is determined under section 243 to be the fiscal quarter of the person;
- "fiscal year".—"fiscal year" of a person means
 - (a) where the person has made an election under section 244 that is in effect, the period that the person elected to be the fiscal year of the person, and
 - (b) in all other cases, the taxation year of the person;
- "floating home".—"floating home" means a structure that is composed of a floating platform and a building designed to be occupied as a place of residence for individuals that is permanently affixed to the platform, but does not include any freestanding appliances or furniture sold with the structure or any structure that has means of, or is capable of being readily adapted for, self-propulsion;
- "foreign convention".—"foreign convention" means a convention
 - (a) at least 75% of the admissions to which are, at the time the sponsor of the convention determines the amount to be charged as consideration therefor, reasonably expected to be supplied to non-resident persons, and
 - (b) the sponsor of which is an organization whose head office is situated outside Canada or, where the organization has no head office, the member, or majority of members, of which having management and control of the organization is or are non-resident;
- "former spouse".—"former spouse" of a particular individual includes an individual of the opposite sex with whom the particular individual cohabited in a conjugal relationship;
- "game of chance".—"game of chance" means a lottery or other scheme under which prizes or winnings are awarded by way of chance or by way of a mixture of chance and other factors where the result depends more on chance than on the other factors;
- "goods".—"goods" has the same meaning as in the Customs Act;
- "government".—"government" means Her Majesty in right of Canada or a province;
- "hospital authority".—"hospital authority" means an organization or that part of an organization that operates a public hospital and that is designated by the Minister as a hospital authority for the purposes of this Part;
- "import".—"import" means import into Canada;
- "improvement".—"improvement", in respect of capital property of a person, means any property or service that is supplied to, or goods that are imported by, the person for the purpose of improving the capital property, to the extent that the consideration paid or payable by the person for the property or service or the value of the goods is, or would be if the person were a taxpayer under the *Income Tax Act*, included in determining the adjusted cost base to the person of the capital property for the purposes of that Act;
- "individual".—"individual" means a natural person:
- "insurance policy".—"insurance policy" means

- (a) a policy or contract of insurance (other than a warranty in respect of the quality, fitness or performance of tangible property, where the warranty is supplied to a person who acquires the property otherwise than for resale) that is issued by an insurer, including
 - (i) a policy of reinsurance issued by an insurer,
 - (ii) an annuity contract issued by an insurer, or a contract issued by an insurer that would be an annuity contract except that the payments under the contract
 - (A) are payable on a periodic basis at intervals that are longer or shorter than one year, or
 - (B) vary in amount depending on the value of a specified group of assets or on changes in interest rates, and
 - (iii) a contract issued by an insurer all or part of the insurer's reserves for which vary in amount depending on the value of a specified group of assets, and
- (b) a policy or contract in the nature of accident, sickness or dental insurance, whether the policy is issued, or the contract is entered into, by an insurer;
- "insurer".— "insurer" means a person who is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an insurance business or under the laws of another jurisdiction to carry on in that other jurisdiction an insurance business;
- "invoice". "invoice" includes a statement of account, a bill and any other similar record, regardless of its form or characteristics, and a cash register slip or receipt;
- "listed financial institution".—"listed financial institution" means a person referred to in paragraph 149(1)(a);
- "membership".—"membership" includes a right granted by a particular person that entitles another person to services that are provided by, or to the use of facilities that are operated by, the particular person and that are not available, or are not available to the same extent or for the same fee or charge, to persons to whom such a right has not been granted, and also includes such a right that is conditional on the acquisition or ownership of a share, bond, debenture or other security;
- "mineral".—"mineral" includes petroleum, natural gas and related hydrocarbons and sand and gravel;
- "Minister".—"Minister" means the Minister of National Revenue;
- "mobile home".—"mobile home" means a unit that is not less than three metres wide and eight metres long, that is equipped with complete plumbing, electrical and heating facilities and that is designed to be towed on its own chassis on wheels to a site for installation on a foundation and connection to service facilities at that site and to be occupied for residential purposes, but does not include any free-standing appliances or furniture sold with the unit or any travel trailer, motor home, camping trailer or other vehicle or trailer for recreational use:
- "money". "money" includes any currency, cheque, promissory note, letter of credit, draft, traveller's cheque, bill of exchange, postal note, money order, postal remittance and other similar instrument, whether Canadian or foreign, but does not include currency the fair market value of which exceeds its stated value as legal tender in the country of issuance or currency that is supplied or held for its numismatic value;
- "month". "month" means a period beginning on a particular day in a calendar month and ending on

- (a) the day immediately before the day in the next calendar month that has the same calendar number as the particular day, or
- (b) where the next calendar month does not have a day that has the same calendar number as the particular day, the last day of that next calendar month;
- "multiple unit residential complex".—"multiple unit residential complex" means a residential complex that contains more than one residential unit, but does not include a condominium complex;
- "municipality".—"municipality" means
 - (a) an incorporated city, town, village, metropolitan authority, township, district, county or rural municipality or other incorporated municipal body however designated, and
 - (b) such other local authority as the Minister may determine to be a municipality for the purposes of this Part;
- "mutual insurance federation".—"mutual insurance federation" means a corporation each member of which is a mutual insurance corporation that is required, under an Act of the legislature of a province, to be a member of the corporation, but does not include a corporation the main purpose of which is
 - (a) related to automobile insurance,
 - (b) to provide compensation to insurance policy holders of, or claimants on, insolvent insurers, or
 - (c) to establish and manage a guarantee fund, cash reserve fund, mutual aid fund or similar fund for the benefit of its members and to provide financial assistance with regard to losses sustained on the winding-up or dissolution of its members;
- "mutual insurance group".—"mutual insurance group" means a group that consists of
 - (a) a mutual insurance federation and its members,
 - (b) where the members of the mutual insurance federation are the sole investors in an investment fund, that fund, and
 - (c) where there exists a mutual reinsurance corporation each member of which is a member of the mutual insurance federation and is not entitled to obtain reinsurance from any other reinsurance corporation, that mutual reinsurance corporation;
- "non-profit organization".—"non-profit organization" means a person (other than an individual, an estate, a trust, a charity, a municipality or a government) that was organized and is operated solely for a purpose other than profit, no part of the income of which is payable to, or otherwise available for the personal benefit of, any proprietor, member or shareholder thereof unless the proprietor, member or shareholder is a club, a society or an association the primary purpose and function of which is the promotion of amateur athletics in Canada;
- "non-resident".—"non-resident" means not resident in Canada;
- "officer".--"officer" includes
 - (a) a member of the board of directors, board of management or other governing board of a corporation, society, union, club, association, organization or any other body of any kind whatever,
 - (b) a judicial officer or a member of a judicial, quasi-judicial or administrative board, tribunal or body,
 - (c) a Minister of the Crown in right of Canada or a province,

- (d) a member of the Senate or House of Commons of Canada,
- (e) a member of a legislature of a province, and
- (f) the incumbent of any other office who is elected or appointed to act as a representative of a group of persons;
- "organizer".—"organizer" of a convention means a person who acquires the convention facility or related convention supplies and who organizes the convention for another person who is the sponsor of the convention;
- "passenger vehicle".—"passenger vehicle" has the meaning assigned by subsection 248(1) of the *Income Tax Act*;
- "patronage dividend".—"patronage dividend" means an amount that is deductible under section 135 of the *Income Tax Act* in computing, for the purposes of that Act, the income of the person paying the amount;
- "permanent establishment". "permanent establishment", in respect of a particular person, means
 - (a) a fixed place of business of the particular person, including
 - (i) a place of management, a branch, an office, a factory or a workshop, and
 - (ii) a mine, an oil or gas well, a quarry, timberland or any other place of extraction of natural resources.

through which the particular person makes supplies, or

- (b) a fixed place of business of another person (other than a broker, general commission agent or other independent agent acting in the ordinary course of business) who is acting in Canada on behalf of the particular person and through whom the particular person makes supplies in the ordinary course of business;
- "person".—"person" means an individual, partnership, corporation, trust or estate, or a body that is a society, union, club, association, commission or other organization of any kind:
- "personal property". "personal property" means property that is not real property;
- "place of amusement".—"place of amusement" means any premises or place, whether or not enclosed, at or in any part of which is staged or held any
 - (a) film, slide show, sound and light or similar presentation,
 - (b) artistic, literary, theatrical, musical or other performance, entertainment or exhibition,
 - (c) fair, circus, menagerie, rodeo or similar event, or
 - (d) race, game of chance, athletic contest or other contest or game,
- and includes a museum, historical site, zoo, wildlife or other park, place where bets are placed and any place, structure, apparatus, machine or device the purpose of which is to provide any type of amusement or recreation;
- "precious metal".—"precious metal" means a bar, ingot, coin or wafer that is composed of gold, silver or platinum and that is refined to a purity level of at least
 - (a) 99.5% in the case of gold and platinum, and
 - (b) 99.9% in the case of silver;
- "prescribed".—"prescribed" means
 - (a) in the case of a form or the manner of filing a form, authorized by the Minister,
 - (b) in the case of the information to be given on a form, specified by the Minister.

- (c) in the case of the manner of making or filing an election, authorized by the Minister, and
- (d) in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation;
- "property".—"property" means any property, whether real or personal, movable or immovable, tangible or intangible, corporeal or incorporeal, and includes a right or interest of any kind, a share and a chose in action, but does not include money;
- "public college".—"public college" means an organization or that part of an organization that operates a post-secondary college or post-secondary technical institute
 - (a) that is funded by a government or a municipality, and
 - (b) the primary purpose of which is to provide programs of instruction in one or more fields of vocational, technical or general education;
- "public sector body".—"public sector body" means a government or a public service body;
- "public service body".—"public service body" means a non-profit organization, a charity, a municipality, a school authority, a hospital authority, a public college or a university;
- "qualifying subsidiary".—"qualifying subsidiary" of a particular corporation means another corporation resident in Canada not less than 90% of the value and number of the issued and outstanding shares of the capital stock of which, having full voting rights under all circumstances, are owned by the particular corporation, and includes
 - (a) a corporation that is a qualifying subsidiary of a qualifying subsidiary of the particular corporation,
 - (b) where the particular corporation is a credit union, every other credit union, and
 - (c) where the particular corporation is a member of a mutual insurance group, every other member of that group;
- "real property".—"real property" includes
 - (a) in respect of property in the Province of Quebec, immovable property and every lease thereof,
 - (b) in respect of property in any other place in Canada, messuages, lands and tenements of every nature and description and every estate or interest in real property, whether legal or equitable, and
- (c) a mobile home, a floating home and any leasehold or proprietary interest therein;
- "recipient".—"recipient" of a supply of property or a service means
 - (a) where consideration for the supply is payable under an agreement for the supply, the person who is liable under the agreement to pay that consideration,
 - (b) where paragraph (a) does not apply and consideration is payable for the supply, the person who is liable to pay that consideration, and
 - (c) where no consideration is payable for the supply,
 - (i) in the case of a supply of property by way of sale, the person to whom the property is delivered or made available.
 - (ii) in the case of a supply of property otherwise than by way of sale, the person to whom possession or use of the property is given or made available, and
 - (iii) in the case of a supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be read as a reference to the recipient of the supply;

- "record".—"record" includes a book, an account, a statement, a voucher, an invoice, a letter, a telegram, an agreement and a memorandum, whether recorded in writing or in some other manner and whether or not some process must be applied to the record to make it readily intelligible;
- "registrant".—"registrant" means a person who is registered, or who is required to be registered, under Subdivision d of Division V;
- "related convention supplies".—"related convention supplies" means property or services acquired or imported by a person exclusively for consumption, use or supply by the person in connection with a convention, but does not include
 - (a) transportation services, other than a chartered service acquired by the person solely for the purpose of transporting attendees of the convention between any of the convention facilities, places of lodging of the attendees or transportation terminals,
 - (b) food, beverages or entertainment,
 - (c) property or services that are supplied to the person under a contract for catering, or
 - (d) property or services supplied by the person in connection with the convention for consideration that is separate from the consideration for the admission to the convention, unless the recipient of the supply is acquiring the property or services exclusively for consumption or use in the course of promoting, at the convention, property or services supplied by, or a business of, the recipient;
- "release".—"release" has the same meaning as in the Customs Act;
- "reporting period". "reporting period" of a person means the reporting period of the person as determined under sections 245 to 251;
- "residential complex".—"residential complex" means
 - (a) that part of a building in which one or more residential units are located, together with
 - (i) that part of any common areas and other appurtenances to the building and the land immediately contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, and
 - (ii) that proportion of the land subjacent to the building that that part of the building is of the whole building,
 - (b) that part of a building that is
 - (i) the whole or part of a semi-detached house, rowhouse unit, residential condominium unit or other similar premises that is, or is intended to be, a separate parcel or other division of real property owned, or intended to be owned, apart from any other unit in the building, and
 - (ii) a residential unit,

together with that proportion of any common areas and other appurtenances to the building and the land subjacent or immediately contiguous to the building that is attributable to the unit and that is reasonably necessary for its use and enjoyment as a place of residence for individuals.

(e) the whole of a building described in paragraph (a), or the whole of a premises described in subparagraph (b)(i), that is owned by or has been supplied by way of sale to

an individual and that is used primarily as a place of residence of the individual, an individual related to the individual or a former spouse of the individual, together with

- (i) in the case of a building described in paragraph (a), any appurtenances to the building, the land subjacent to the building and that part of the land immediately contiguous to the building, that are reasonably necessary for the use and enjoyment of the building, and
- (ii) in the case of a premises described in subparagraph (b)(i), that part of any common areas and other appurtenances to the building and the land subjacent or immediately contiguous to the building that is attributable to the unit and that is reasonably necessary for the use and enjoyment of the unit,
- (d) a mobile home, together with any appurtenances to the home and, where the home is affixed to land (other than a site in a residential trailer park) for the purpose of its use and enjoyment as a place of residence for individuals, the land subjacent or immediately contiguous to the home that is attributable to the home and is reasonably necessary for that purpose, and
- (e) a floating home,

but not including a building, or that part of a building, that is a hotel, a motel, an inn, a boarding house, a lodging house or other similar premises, or the land and appurtenances attributable to the building or part, where the building is not described in paragraph (c) and all or substantially all of the supplies of residential units in the building or part by way of lease, licence or similar arrangement are, or are expected to be, for periods of less than sixty days;

- "residential condominium unit".—"residential condominium unit" means a residential complex that is, or is intended to be, a bounded space in a building designated or described as a separate unit on a registered condominium or strata lot plan or description, or a similar plan or description registered under the laws of a province, and includes any interest in land pertaining to ownership of the unit;
- "residential trailer park".—"residential trailer park" of a person means the land that is included in a trailer park of the person or, where the person has two or more trailer parks that are immediately contiguous to each other, the land that is included in those contiguous trailer parks, and any buildings, fixtures and other appurtenances to the land that are reasonably necessary for
 - (a) the use and enjoyment of sites in the trailer parks by individuals residing in or occupying mobile homes, or travel trailers, motor homes or similar vehicles or trailers, situated or to be situated on those sites, or
 - (b) the purpose of engaging in the business of supplying those sites by way of lease, licence or similar arrangement,
- but does not include such land and appurtenances or any part of them unless the land encompasses at least two sites and all or substantially all of the sites in the trailer parks
 - (c) are supplied, or are intended to be supplied, by way of lease, licence or similar arrangement for a period of at least
 - (i) one month, in the case of a mobile home or other residential unit, and
 - (ii) twelve months, in the case of a travel trailer, motor home or similar vehicle or trailer that is not a residential unit, and
 - (d) if the sites were occupied by mobile homes, would be suitable for use by individuals as places of residence throughout the year;

"residential unit".—"residential unit" means

- (a) a detached house, semi-detached house, rowhouse unit, condominium unit, mobile home, floating home or apartment,
- (b) a suite or room in a hotel, a motel, an inn, a boarding house, a lodging house or a residence for students, elderly persons, infirm persons or other individuals, or
- (c) any other similar premises,

or that part thereof that

- (d) is occupied by an individual as a place of residence or lodging,
- (e) is supplied by way of lease, licence or similar arrangement for the occupancy thereof as a place of residence or lodging for individuals,
- (f) is vacant, but was last occupied or supplied as a place of residence or lodging for individuals, or
- (g) has never been used or occupied for any purpose, but is intended to be used as a place of residence or lodging for individuals;
- "sale".—"sale", in respect of property, includes any transfer of the ownership of the property and a transfer of the possession of the property under an agreement to transfer ownership of the property;
- "school authority".—"school authority" means an organization or that part of an organization that operates in a province an elementary or secondary school in which it provides instruction that meets the standards of educational instruction established by the government of the province;
- "segregated fund".—"segregated fund" of an insurer means a specified group of properties that is held in respect of insurance policies all or part of the reserves for which vary in amount depending on the fair market value of the properties;
- "service".—"service" means anything other than
 - (a) property,
 - (b) money, and
 - (c) anything that is supplied to an employer by a person who is or agrees to become an employee of the employer in the course of or in relation to the office or employment of that person;
- "short-term accommodation". "short-term accommodation" means a residential complex or a residential unit that is supplied by way of lease, licence or similar arrangement for the purpose of its occupancy by an individual as a place of residence or lodging, where the complex or unit is occupied by the same individual for a period of less than a month;
- "single unit residential complex". "single unit residential complex" means a residential complex that does not contain more than one residential unit, but does not include a residential condominium unit:
- "small supplier".—"small supplier", at any time, means a person who is at that time a small supplier under section 148 or 148.1;
- "specified Crown agent".— "specified Crown agent" means a prescribed agent of Her Majesty in right of Canada;
- "specified tangible personal property". "specified tangible personal property" means property that is, or is an interest in,

- (a) a print, an etching, a drawing, a painting, a sculpture or other similar work of art,
- (b) jewellery,
- (c) a rare folio, a rare manuscript or a rare book,
- (d) a stamp,
- (e) a coin, or
- (f) prescribed personal property;
- "sponsor".—"sponsor" of a convention means the person who convenes the convention and supplies admissions to it;
- "substantial renovation".—"substantial renovation" of a residential complex means the renovation or alteration of a building to such an extent that all or substantially all of the building that existed immediately before the renovation or alteration was begun, other than the foundation, external walls, interior supporting walls, floors, roof and staircases, has been removed or replaced where, after completion of the renovation or alteration, the building is, or forms part of, a residential complex;
- "supplier".—"supplier", in respect of a supply, means the person making the supply;
- "supply".—"supply" means, subject to sections 133 and 134, the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition;
- "tax".—"tax" means tax payable under this Part;
- "taxable supply".—"taxable supply" means a supply that is made in the course of a commercial activity;
- "taxation year".—"taxation year" of a person means
 - (a) where the person is a taxpayer, within the meaning of that term in the *Income Tax Act* (other than an unincorporated person exempt because of subsection 149(1) of that Act from tax under Part I of that Act on all or part of the person's taxable income), the taxation year of the person for the purposes of that Act, and
 - (b) in any other case, the period that would be the taxation year of the person for the purposes of that Act if the person were a corporation;
- "Tax Court".—"Tax Court" means the Tax Court of Canada;
- "tax fraction".—"tax fraction" means 7/107;
- "taxi business".—"taxi business" means a business carried on in Canada of transporting passengers by taxi for fares that are regulated under the laws of Canada or a province;
- "trailer park".— "trailer park" of a person means a piece of land that is owned by or leased to the person and that is exclusively composed of
 - (a) one or more sites each of which is, or is intended to be, supplied by the person by way of lease, licence or similar arrangement to the owner, lessee or person in occupation or possession of a mobile home, or a travel trailer, motor home or similar vehicle or trailer, situated or to be situated on the site, and
 - (b) other land that is reasonably necessary for
 - (i) the use and enjoyment of the sites by individuals residing in or occupying mobile homes, or travel trailers, motor homes or similar vehicles or trailers, situated or to be situated on those sites, or

- (ii) the purpose of engaging in the business of supplying the sites by way of lease, licence or similar arrangement;
- "university".— "university" means a recognized degree-granting institution and an organization or that part of an organization that operates a college affiliated with such an institution or that operates a research body of such an institution;
- "used tangible personal property".—"used tangible personal property" means tangible personal property that has, at any time, been used in Canada and "used specified tangible personal property" means specified tangible personal property unless satisfactory evidence is available to establish that
 - (a) where the property is a print, an etching, a drawing, a painting, a sculpture or other similar work of art, it has been held in Canada solely for supply in the ordinary course of business by a registrant since the latest of
 - (i) the day the person who created the property first made a supply by way of sale of the property,
 - (ii) the beginning of January 1, 1991, and
 - (iii) the day the property was last imported, and
 - (b) where the property is property not referred to in paragraph (a), it has been held in Canada solely for supply in the ordinary course of business by a registrant since the later of
 - (i) the beginning of January 1, 1991, and
 - (ii) the day the property was last imported;
- "zero-rated supply".—"zero-rated supply" means a supply included in Schedule VI.
 - (2) Meaning of "Canada".—Subject to subsection (3), in this Part, "Canada" includes
 - (a) the sea bed and subsoil of the submarine areas adjacent to the coasts of Canada in respect of which the government of Canada or of a province may grant a right, licence or privilege to explore for or exploit any minerals; and
 - (b) the seas and airspace above the submarine areas referred to in paragraph (a) in respect of any activities carried on in connection with the exploration for or exploitation of minerals.
- (3) **Idem.**—In or in respect of Division III, "Canada" has the same meaning as in the *Customs Act*.
- (4) **Application of provisions to schedules.**—Any provision of this Part that applies for the purposes of this Part also applies for the purposes of Schedules V, VI and VII. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, ss. 10, 204; S.C. 1994, c. 9, s. 2; S.C. 1994, c. 13, s. 7 (1) (g).
- **124.** (1) **Compound interest.**—Interest computed at a prescribed rate and any penalty computed at a rate per year under any provision of this Part shall be compounded daily.
- (2) **Idem.**—Where, on any day, both penalty computed at a rate per year and interest are required to be compounded, they shall, on that day, be compounded together at a single rate equal to the total of the penalty rate and the interest rate as though both the penalty and interest were interest computed at that single rate.
- (3) **Application of interest.**—Where an amendment to this Part, or an amendment or an enactment that relates to this Part,
 - (a) applies to a person who did something or to or for whom something was done,

- (b) applies to property or a service that was supplied or in respect of which something was done,
 - (c) applies to an event or transaction that occurred,
 - (d) applies to a period all or part of which is, or
 - (e) comes into force on a particular day that is,

before the day the amendment or enactment is assented to or promulgated, for the purposes of applying the provisions of this Part that relate to or that provide for the payment, or the liability for payment, of interest in respect of any amount, the amount shall be determined and interest shall be computed thereon as though the amendment or enactment had been assented to or promulgated before the thing was done, the supply was made, the occurrence of the event or transaction, the beginning of the period or the particular day, as the case may be.

- (4) Exception.—Subsection (3) does not apply for the purposes of computing any penalties under this Part. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 11.
- 125. Negative amounts.—Except as specifically otherwise provided, where an amount or a number is required under this Part to be determined or calculated by or in accordance with an algebraic formula, if the amount or number when so determined or calculated would, but for this section, be a negative amount or number, it shall be deemed to be nil. S.C. 1990, c. 45, s. 12.

Relationships, Associations, Separate Persons and Residence

- 126. (1) Arm's length.—For the purposes of this Part, related persons shall be deemed not to deal with each other at arm's length and it is a question of fact whether persons not related to each other were, at any particular time, dealing with each other at arm's length.
- (2) **Related persons.**—Persons are related to each other for the purposes of this Part if, by reason of subsections 251(2) to (6) of the *Income Tax Act*, they are related to each other for the purposes of that Act.
- (3) **Idem.**—For the purposes of this Part, a member of a partnership shall be deemed to be related to the partnership. S.C. 1990, c. 45, s. 12.
- **127.** (1) **Associated persons.**—A particular corporation is associated with another corporation for the purposes of this Part if, by reason of subsections 256(1) to (6) of the *Income Tax Act*, the particular corporation is associated with the other corporation for the purposes of that Act.
- (2) **Idem.**—A person other than a corporation is associated with a particular corporation for the purposes of this Part if the particular corporation is controlled by the person or by a group of persons of which the person is a member and each of whom is associated with each of the others.
 - (3) Idem.—For the purposes of this Part, a person is associated with
 - (a) a partnership if the total of the shares of the profits of the partnership to which the person and all other persons who are associated with the person are entitled is more than half of the total profits of the partnership, or would be more than half of the total profits of the partnership if it had profits; and
 - (b) a trust if the total of the values of the interests in the trust of the person and all other persons who are associated with the person is more than half of the total value of all interests in the trust.

- (4) **Idem.**—For the purposes of this Part, a person is associated with another person if each of them is associated with the same third person. S.C. 1990, c. 45, s. 12.
- **128.** (1) **Closely related corporation.**—For the purposes of this Part, a particular corporation and another corporation are closely related to each other at any time if at that time the particular corporation is resident in Canada and is a registrant and at that time
 - (a) the other corporation is resident in Canada and is a registrant and not less than 90% of the value and number of the issued and outstanding shares of the capital stock of the other corporation, having full voting rights under all circumstances, are owned by
 - (i) the particular corporation,
 - (ii) a qualifying subsidiary of the particular corporation,
 - (iii) a corporation of which the particular corporation is a qualifying subsidiary,
 - (iv) a qualifying subsidiary of a corporation of which the particular corporation is a qualifying subsidiary, or
 - (v) any combination of the corporations or subsidiaries referred to in subparagraphs (i) to (iv).
 - (vi) [Repealed.]
 - (b) the other corporation is a prescribed corporation in relation to the particular corporation,
- and, for the purposes of this section, a non-resident insurer that has a permanent establishment in Canada shall be deemed to be resident in Canada.
- (2) **Idem.**—Where under subsection (1) two corporations resident in Canada are closely related to the same corporation, or would be so related if all of the corporations were resident in Canada, they are closely related to each other for the purposes of this Part.
- (3) Credit unions and members of mutual insurance groups.—For the purposes of this section,
 - (a) a credit union and a member of a mutual insurance group shall each be deemed to be a registrant; and
 - (b) an investment fund that is a member of a mutual insurance group shall be deemed to be a corporation. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 12.
- **129.** (1) **Meaning of "small supplier division".**—In this section and section 129.1, "small supplier division" of a public service body, at any time, means a branch or division of the body that, at that time,
 - (a) is a branch or division designated by the Minister as an eligible division for the purposes of this section; and
 - (b) would be a small supplier under section 148 if
 - (i) the branch or division were a person separate from the body and its other branches or divisions,
 - (ii) the branch or division were not associated with any other person, and
 - (iii) every supply made by the body through the branch or division were made by the branch or division.
- (2) **Branches of public service bodies.** —A public service body that is engaged in one or more activities in separate branches or divisions may apply to the Minister, in prescribed form

containing prescribed information, to have a branch or division specified in the application designated by the Minister as an eligible division for the purposes of this section.

- (3) **Designation by Minister.**—Where the Minister receives an application under subsection (2), the Minister may, by notice in writing, designate a branch or division specified in the application as an eligible division for the purposes of this section, effective on a day specified in the notice, if the Minister is satisfied that
 - (a) the branch or division can be separately identified by reference to its location or the nature of the activities engaged in by it;
 - (b) separate records, books of account and accounting systems are maintained in respect of the branch or division; and
 - (c) a revocation under subsection (4) pursuant to a request made by the body in respect of the branch or division has not become effective in the 365-day period ending on that day.
- (4) **Revocation of designation.**—The Minister may, in writing, revoke a designation under subsection (3) of a branch or division of a public service body where the conditions described in paragraph (3)(a) or (b) are no longer met in respect of the branch or division or the body makes a request in writing to the Minister that the designation be revoked.
- (5) **Notice of revocation.**—Where, under subsection (4), the Minister revokes a designation of a branch or division of a public service body, the Minister shall send a notice in writing of the revocation to the body and shall specify in the notice the effective date of the revocation.
- (6) Supply of property on becoming a small supplier division.—For the purposes of this Part, where a branch or division of a public service body that is a registrant becomes at any time a small supplier division and the body does not, at that time, cease to be a registrant, the body shall be deemed
 - (a) to have made, immediately before that time, a supply of each of its properties, other than capital property or an improvement thereto, that was held immediately before that time for consumption, use or supply in the course of commercial activities of the body and that the body begins, immediately after that time, to hold for consumption, use or supply primarily in the course of activities engaged in by the body through its small supplier divisions; and
 - (b) except where the supply is an exempt supply, to have collected, immediately before that time, tax in respect of the supply equal to the total of all input tax credits in respect of the property that the body was entitled to claim at or before that time.
 - (7) Services and rented properties on becoming a small supplier division.—Where,
 - (a) at any time in a particular reporting period of a public service body that is a registrant, a branch or division of the body becomes a small supplier division,
 - (b) the body does not, at that time, cease to be a registrant, and
 - (c) in or before that period, tax became payable, or was paid without having become payable, by the body and is calculated on consideration, or a part thereof,
 - (i) that is a rent, royalty or similar payment in respect of property and that is reasonably attributable to a period (in this subsection referred to as the "lease period") after that time, or
- (ii) that is reasonably attributable to services that are to be rendered after that time, the following rules apply:
 - (d) there shall not be included, in determining the input tax credits in respect of that tax

that are claimed by the body in the return under section 238 for that or any subsequent reporting period, any portion of the amount determined by the formula

$A \times B$

where

A is that tax, and

- B is the extent (expressed as a percentage) to which the property is used by the body during the lease period, or the services were acquired or imported by the body for consumption, use or supply, in the course of activities engaged in by the body through the branch or division, and
- (e) where all or any portion of the amount determined under paragraph (d) was included in determining an input tax credit claimed by the body in a return under section 238 for a reporting period of the body ending before the particular reporting period, that amount or portion thereof shall be added in determining the net tax for the particular reporting period. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 13; S.C. 1994, c. 9, s. 3.
- **129.1** (1) **Supply by small supplier division.**—Where a public service body makes a taxable supply, other than a supply of real property by way of sale, through a branch or division of the body and the consideration or a part thereof for the supply becomes due to the body at a time when the branch or division is a small supplier division or is paid to the body at such a time without having become due,
 - (a) that consideration or part thereof, as the case may be, shall not be included in calculating the tax payable in respect of the supply or in determining a threshold amount of the body under section 249; and
 - (b) that supply shall, for the purposes of this Part, be deemed not to have been made by a registrant.
- (2) **Restriction on input tax credits for purchases.**—In determining an input tax credit of a public service body, there shall not be included an amount in respect of tax that, at any time after March 27, 1991, became payable, or was paid without having become payable, by the body, to the extent that the tax
 - (a) is in respect of the acquisition or importation of property (other than capital property or improvements thereto) of the body for the purpose of consumption, use or supply in the course of activities engaged in by the body through a small supplier division of the body; or
 - (b) is calculated on consideration, or a part thereof, that is reasonably attributable to services that were, before that time, consumed, used or supplied by the body in the course of activities engaged in by the body through a small supplier division of the body or that are, at that time, intended to be so consumed, used or supplied.
- (3) Restriction on input tax credits for leases. Where property is supplied by way of lease, licence or similar arrangement to a public service body for consideration that includes two or more periodic payments that are attributable to successive parts (each of which is referred to in this subsection as a "lease interval") of the period for which possession or use of the property is provided under the arrangement and, at any time after March 27, 1991 and in a reporting period of the body, tax in respect of the supply, calculated on a particular periodic payment, becomes payable by the body or is paid by the body without having become payable, that tax shall not be included in determining an input tax credit of the body in respect of the property for the reporting period to the extent that the body intended, at the beginning of the

lease interval to which the particular periodic payment is attributable, to use the property in the course of activities engaged in by the body through a small supplier division of the body.

(4) Change in use of non-capital property.—Where

- (a) at any time after March 27, 1991, a public service body that is a registrant begins to hold property of the body (other than capital property) for consumption, use or supply primarily in the course of activities engaged in by the body through its small supplier divisions, and
- (b) immediately before that time, the body was holding the property for consumption, use or supply
 - (i) in the course of commercial activities of the body, and
 - (ii) otherwise than primarily in the course of activities engaged in by the body through its small supplier divisions,

except where subsection 129(6) or 171(3) applies, the body shall be deemed to have made, immediately before that time, a supply of the property and, except where the supply is an exempt supply, to have collected, immediately before that time, tax in respect of the supply equal to the total of all input tax credits in respect of the property that the body was entitled to claim at or before that time.

(5) Idem.—Where

- (a) a public service body begins, at any time after March 27, 1991, to hold property of the body (other than capital property) for consumption, use or supply primarily in the course of activities engaged in by the body otherwise than through its small supplier divisions,
- (b) immediately before that time the property was held by the body for consumption, use or supply primarily in the course of activities engaged in by the body through its small supplier divisions, and
- (c) immediately after that time the property is held by the body for consumption, use or supply in the course of commercial activities engaged in by the body otherwise than through its small supplier divisions,

except where subsection 171(1) applies, for the purpose of determining an input tax credit of the body, it shall be deemed to have received a supply of the property and to have paid, at that time, tax in respect of the supply equal to the lesser of

(d) the amount, if any, by which

(i) the total of all amounts each of which is tax that, before that time, was paid or became payable by the body in respect of the last acquisition or importation of the property by the body or that was deemed under subsection 129(6) to have been collected by the body in respect of the property

exceeds

- (ii) the total of all input tax credits and rebates that the body was entitled to claim under this Part before that time in respect of that acquisition or importation, and
- (e) tax calculated on the fair market value of the property at that time.
- (6) Use of capital property.—For the purposes of determining an input tax credit in respect of capital property of a public service body and for the purposes of Subdivision d of Division II, an activity engaged in by a public service body shall be deemed not to be a commercial activity of the body to the extent that the activity is engaged in through a small supplier division of the body.

- (7) **Application of change in use rules.**—Subsections 200(2) and 206(4) and (5) do not apply to a public service body in respect of a reduction in the extent to which property is used in commercial activities of the body where the reduction in use occurs
 - (a) before March 28, 1991; and
 - (b) as a result of the application of subsection (6) but not as a result of a branch or division of the body becoming a small supplier division. S.C. 1993, c. 27, s. 13.
- 130. (1) Members of unincorporated organizations. —Where a particular unincorporated organization is a member of another unincorporated organization, the particular organization and the other organization may apply jointly to the Minister, in prescribed form containing prescribed information, to have the particular organization deemed to be a branch of the other organization and not to be a separate person.
- (2) **Approval by Minister.**—Where the Minister receives an application under subsection (1) in respect of a particular organization that is a member of another organization and is satisfied that it is appropriate, for the purposes of this Part, to approve the application, the Minister may, in writing, approve the application and, subject to subsection (3), the particular organization shall, for the purposes of this Part (other than the purposes for which the particular organization is deemed under subsection 129(2) to be a separate person), be deemed to be a branch of the other organization and not to be a separate person.
 - (3) Revocation of approval.—Where
 - (a) the Minister has approved an application made under subsection (1) in respect of a particular organization that is a member of another organization, and
 - (b) either the particular organization or the other organization requests the Minister in writing to revoke the approval,

the Minister may revoke the approval and thereafter the particular organization shall be deemed to be a separate person and not to be a branch of the other organization.

- (4) **Notice of revocation.**—Where under subsection (3) the Minister revokes an approval, the Minister shall send a notice in writing of the revocation to the organizations affected and shall specify therein the effective date of the revocation. S.C. 1990, c. 45, s. 12.
- **131.** Segregated fund a separate person.—For the purposes of this Part, a segregated fund of an insurer shall be deemed to be a trust that is a separate person from the insurer and that does not deal at arm's length with the insurer and
 - (a) the insurer shall be deemed to be a trustee of that trust; and
 - (b) the activities of the segregated fund shall be deemed to be activities of the trust and not activities of the insurer. S.C. 1990, c. 45, s. 12.
- **132.** (1) **Person resident in Canada.**—For the purposes of this Part, a person shall be deemed to be resident in Canada at any time
 - (a) in the case of a corporation, if the corporation is incorporated or continued in Canada and not continued elsewhere;
 - (b) in the case of a partnership, an unincorporated society, a club, an association or an organization, or a branch thereof, if the member, or a majority of the members, having management and control thereof is or are resident in Canada at that time; or
 - (c) in the case of a labour union, if it is carrying on activities as such in Canada and has a local union or branch in Canada at that time.
 - (2) Permanent establishment of non-resident.—For the purposes of this Part, where a

non-resident person has a permanent establishment in Canada, the person shall be deemed to be resident in Canada in respect of, but only in respect of, activities of the person carried on through that establishment.

- (3) **Permanent establishment of resident.**—For the purposes of this Part, where a person who is resident in Canada has a permanent establishment in a country other than Canada, the person shall be deemed to be a non-resident person in respect of, but only in respect of, activities of the person carried on through that establishment.
- (4) **Supplies between permanent establishments.**—For the purposes of this Part, where a person carries on a business through a permanent establishment of the person in Canada and through another permanent establishment of the person outside Canada,
 - (a) any transfer of personal property or rendering of a service by the establishment in Canada to the establishment outside Canada shall be deemed to be a supply of the property or service; and
 - (b) in respect of that supply, the permanent establishments shall be deemed to be separate persons who deal with each other at arm's length.
- (5) **Residence of international shipping corporations.**—Where under subsection 250(6) of the *Income Tax Act* a corporation is deemed for the purposes of that Act to be resident in a country other than Canada throughout a taxation year of the corporation and not to be resident in Canada at any time in the year, the corporation shall, for the purposes of this Part but subject to subsection (2), be deemed to be resident in that other country throughout the year and not to be resident in Canada at any time in the year. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 14.

Supplies and Commercial Activities

- 133. Agreement as supply.—For the purposes of this Part, where an agreement is entered into to provide property or a service,
 - (a) the entering into of the agreement shall be deemed to be a supply of the property or service made at the time the agreement is entered into; and
 - (b) the provision, if any, of property or a service under the agreement shall be deemed to be part of the supply referred to in paragraph (a) and not a separate supply. S.C. 1990, c. 45, s. 12.
- 134. Transfer of security interest.—For the purposes of this Part, where, under an agreement entered into in respect of a debt or obligation, a person transfers property or an interest in property for the purpose of securing payment of the debt or performance of the obligation, the transfer shall be deemed not to be a supply, and where, on payment of the debt or performance of the obligation or the forgiveness of the debt or obligation, the property or interest is retransferred, the retransfer of the property or interest shall be deemed not to be a supply. S.C. 1990, c. 45, s. 12.
- 135. Sponsorship of public service activities.—For the purposes of this Part, where a public service body makes a supply
 - (a) of a service, or
 - (b) by way of licence, the use of a copyright, trade-mark, trade-name or other similar property of the body,

to a person who is the sponsor of an activity of the body for use by the person exclusively in publicizing the person's business, the supply by the body of the service or the use of the

property shall be deemed not to be a supply, except where it may reasonably be regarded that the consideration for the supply is primarily for a service of advertising by means of radio or television or in a newspaper, magazine or other publication published periodically or for a prescribed service. S.C. 1990, c. 45, s. 12.

- 136. (1) Lease etc. of property.—For the purposes of this Part, a supply, by way of lease, licence or similar arrangement, of the use or right to use real property or tangible personal property shall be deemed to be a supply of real property or tangible personal property, as the case may be.
- (2) **Combined supply of real property.**—For the purposes of this Part, where a supply of real property includes the provision of
 - (a) a residential complex or land, a building or part of a building that forms or is reasonably expected to form part of a residential complex, and
 - (b) other real property that is not part, and is not reasonably expected to form part, of a residential complex,

the property referred to in paragraph (a) and the property referred to in paragraph (b) shall each be deemed to be a separate property and the provision of the property referred to in paragraph (a) shall be deemed to be a separate supply from the provision of the property referred to in paragraph (b), and neither supply is incidental to the other. S.C. 1990, c. 45, s. 45; S.C. 1993, c. 27, s. 15.

- (2.1) **Combined lease of real property.**—For the purposes of this Part, where a supply of particular property described in any of paragraphs (a) to (c) of section 6.1 of Part I of Schedule V is made by way of lease, licence or similar arrangement
 - (a) for a period during which the lessee or any sub-lessee makes, or holds the particular property for the purpose of making, one or more supplies described in paragraph (d) or (e) of that section, and
 - (b) for consideration that includes two or more periodic payments that are attributable to successive parts (each of which is referred to in this subsection and in section 6.1 of Part I of Schedule V as a "lease interval") of the period for which possession or use of the particular property is provided under the arrangement,

the supplier shall be deemed to have made, and the lessee shall be deemed to have received, a separate supply of the particular property for each lease interval and the periodic payment (or, where subsection (2) applied to property that includes the particular property, the portion of the periodic payment that may reasonably be attributed to the particular property) that is attributable to a particular lease interval shall be deemed to be consideration payable in respect of the separate supply of the particular property for the particular lease interval.

- (3) [Combined supply of real property]. —For the purposes of this Part, where a builder of an addition to a multiple unit residential complex makes a supply of the complex or an interest in it by way of sale that, but for this subsection, would be a taxable supply and, but for the construction of the addition, would be an exempt supply described in section 5 of Part I of Schedule V, the addition and the remainder of the complex shall each be deemed to be a separate property and the sale of the addition or the interest in it shall be deemed to be a separate supply from the sale of the remainder of the complex or the interest in it, and neither supply is incidental to the other.
- (4) **Idem.**—For the purposes of this Part, where a person who has increased the area of land included in a residential trailer park of the person makes a supply of the park or an interest in it that, but for this subsection, would be a taxable supply and, but for the increase in the area

of land included in the park, would be an exempt supply described in section 5.3 of Part I of Schedule V, the area of land by which the park was increased and the remainder of the park shall each be deemed to be a separate property and the sale of the additional area or the interest therein shall be deemed to be a supply separate from the sale of the remainder of the park or the interest in the park, and neither supply is incidental to the other. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 15.

137. Coverings and containers.—For the purposes of this Part, where tangible personal property of a particular class is supplied in a covering or container that is usual for that class of property, the covering or container shall be deemed to form part of the property so supplied. S.C. 1990, c. 45, s. 12.

138. Incidental supplies.—For the purposes of this Part, where

- (a) a particular property or service is supplied together with any other property or service for a single consideration, and
- (b) it may reasonably be regarded that the provision of the other property or service is incidental to the provision of the particular property or service,

the other property or service shall be deemed to form part of the particular property or service so supplied. S.C. 1990, c. 45, s. 12.

139. Financial services in mixed supply.—For the purposes of this Part, where

- (c) it is the usual practice of the supplier to supply those or similar services, or those or similar properties and services, together in the ordinary course of the business of the supplier, and
- (d) the total of all amounts, each of which would be the consideration for a financial service so supplied if that financial service had been supplied separately, is greater than 50% of the total of all amounts, each of which would be the consideration for a service or property so supplied if that service or property had been supplied separately,

the supply of each of the services and properties shall be deemed to be a supply of a financial service. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 16.

140. Supply of membership with security.—For the purposes of this Part, where

- (a) a person makes a supply of a share, bond, debenture or other security (other than a share in a credit union or in a cooperative corporation the main purpose of which is not to provide dining, recreational or sporting facilities) that represents capital stock or debt of a particular organization, and
- (b) ownership of the security by the recipient of the supply is a condition of the recipient's, or another person's, obtaining a membership, or a right to acquire a membership, in the particular organization or in another organization that is related to the particular organization,

the supply of the security shall be deemed to be a supply of a membership and not a supply of a financial service. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 17 (Note: S.C. 1993, c. 27, s. 17(2) amended by S.C. 1994, c. 9, s. 36).

- 141. (1) Use in commercial activities.—For the purposes of this Part, where substantially all of the consumption or use of property or a service by a person, other than a financial institution, is in the course of the person's commercial activities, all of the consumption or use of the property or service by the person shall be deemed to be in the course of those activities.
- (2) **Intended use in commercial activities.**—For the purposes of this Part, where substantially all of the consumption or use for which a person, other than a financial institution,

acquires or imports property or a service is in the course of the person's commercial activities, all of the consumption or use for which the person acquired or imported the property or service shall be deemed to be in the course of those activities.

- (3) Use in other activities.—For the purposes of this Part, where substantially all of the consumption or use of property or a service by a person, other than a financial institution, is in the course of particular activities of the person that are not commercial activities, all of the consumption or use of the property or service by the person shall be deemed to be in the course of those particular activities.
- (4) **Intended use in other activities.**—For the purposes of this Part, where substantially all of the consumption or use for which a person, other than a financial institution, acquires or imports property or a service is in the course of particular activities of the person that are not commercial activities, all of the consumption or use for which the person acquired or imported the property or service shall be deemed to be in the course of those particular activities.
- (5) **Real property that includes residential complex.** For the purposes of subsections (1) to (4), where real property includes a residential complex and another part that is not part of the residential complex,
 - (a) the residential complex and the other part shall each be deemed to be a separate property; and
 - (b) where property or a service is acquired for consumption or use in relation to the real property, subsections (1) to (4) apply to the property or service only to the extent it is acquired for consumption or use in relation to the part that is not part of the residential complex. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 18.
 - 141.01 (1) Meaning of "endeavour".—In this section, "endeavour" of a person means
 - (a) a business of the person, other than a business in the ordinary course of which the person has not made, and does not intend to make, supplies;
 - (b) an adventure or concern in the nature of trade of the person; or
 - (c) the making of a supply by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply.
- (2) **Acquisition for purpose of making supplies.**—Where a person acquires or imports property or a service for consumption or use in the course of an endeavour of the person, the person shall, for the purposes of this Part, be deemed to have acquired or imported the property or service
 - (a) for consumption or use in the course of commercial activities of the person, to the extent that the property or service is acquired or imported by the person for the purpose of making taxable supplies in the course of that endeavour; and
 - (b) for consumption or use otherwise than in the course of commercial activities of the person, to the extent that the property or service is acquired or imported by the person
 - (i) for the purpose of making supplies in the course of that endeavour that are not taxable supplies, or
 - (ii) for a purpose other than the making of supplies in the course of that endeavour.
- (3) **Use for purpose of making supplies.**—Where a person consumes or uses property or a service in the course of an endeavour of the person, that consumption or use shall, for the purposes of this Part, be deemed to be

- (a) in the course of commercial activities of the person, to the extent that the consumption or use is for the purpose of making taxable supplies in the course of that endeavour; and
- (b) otherwise than in the course of commercial activities of the person, to the extent that the consumption or use is
 - (i) for the purpose of making supplies in the course of that endeavour that are not taxable supplies, or
 - (ii) for a purpose other than the making of supplies in the course of that endeavour.

(4) Free supplies.—Where

- (a) a supplier makes a taxable supply (in this subsection referred to as a "free supply") of property or a service for no consideration or nominal consideration in the course of a particular endeavour of the supplier, and
- (b) it can reasonably be regarded that among the purposes (in this subsection referred to as the "specified purposes") for which the free supply is made is the purpose of facilitating, furthering or promoting
 - (i) the acquisition, consumption or use of other property or services by any other person, or
 - (ii) an endeavour of any person,

the following rules apply:

- (c) to the extent that the supplier acquired or imported a particular property or service for the purpose of making the free supply of that property or service or for consumption or use in the course of making the free supply, the supplier shall be deemed, for the purposes of subsection (2), to have acquired or imported the particular property or service
 - (i) for use in the course of the particular endeavour, and
 - (ii) for the specified purposes and not for the purpose of making the free supply, and
- (d) to the extent that the supplier consumed or used a particular property or service for the purpose of making the free supply, the supplier shall be deemed, for the purposes of subsection (3), to have consumed or used the particular property or service for the specified purposes and not for the purpose of making the free supply.
- (5) **Method of determining extent of use, etc.**—The methods used by a person in a fiscal year to determine
 - (a) the extent to which properties or services are acquired or imported by the person for the purpose of making taxable supplies or for other purposes, and
 - (b) the extent to which the consumption or use of properties or services is for the purpose of making taxable supplies or for other purposes,

shall be fair and reasonable and shall be used consistently by the person throughout the year.

(6) Application to other provisions.—Where

- (a) a particular provision of this Part, other than subsections (2) to (4), deems certain circumstances or facts to exist, and
- (b) that deeming is dependent, in whole or in part, on the particular circumstance that property or a service is or was consumed or used, or acquired or imported for consumption or use, to a certain extent in the course of, or otherwise than in the course of, commercial activities or other activities.

that certain extent shall be determined under subsection (2) or (3), as the case requires, for the

purpose of determining whether the particular circumstance exists, but where it is so determined that the particular circumstance exists and all other circumstances necessary for the particular provision to apply exist, the deeming by the particular provision shall apply notwithstanding subsections (2) and (3).

(7) **Idem.**—Where a provision of this Part deems the consideration for a supply not to be consideration for the supply, a supply to be made for no consideration or a supply not to have been made by a person, that deeming shall not apply for the purposes of any of subsections (1) to (4), S.C. 1994, c. 9, s. 4.

141.1 (1) **Disposition of personal property.**—For the purposes of this Part,

- (a) where a person makes a supply (other than an exempt supply) of personal property that
 - (i) was last acquired or imported by the person for consumption or use in the course of commercial activities of the person or was consumed or used by the person in the course of a commercial activity of the person after it was last acquired or imported by the person, or
 - (ii) was manufactured or produced by the person in the course of a commercial activity of the person or for consumption or use in the course of a commercial activity of the person, or was manufactured or produced by the person and consumed or used in the course of a commercial activity of the person, and was not deemed under this Part to have been acquired by the person,

the person shall be deemed to have made the supply in the course of the commercial activity; and

- (b) where a person makes a supply (other than a supply made by way of lease, licence or similar arrangement in the course of a business of the person) of personal property that
 - (i) was last acquired or imported by the person exclusively for consumption or use in the course of activities of the person that are not commercial activities and was not consumed or used by the person in the course of commercial activities of the person after it was last acquired or imported by the person, or
 - (ii) was manufactured or produced by the person in the course of activities of the person that are not commercial activities exclusively for consumption or use in the course of activities of the person that are not commercial activities, was not consumed or used in the course of a commercial activity of the person and was not deemed under this Part to have been acquired by the person,

the person shall be deemed to have made the supply otherwise than in the course of commercial activities.

- (2) Disposition of inventory, etc..—For the purposes of this Part,
- (a) where a person makes a particular supply by way of sale of personal property or a service that was acquired, imported, manufactured or produced by the person exclusively for the purpose of making a supply of that property or service by way of sale in the course of a business of the person or in the course of an adventure or concern of the person in the nature of trade, except where
 - (i) the particular supply is an exempt supply,
 - (ii) paragraph (b) applies in respect of the particular supply, or
 - (iii) the person is an individual or a partnership, all of the members of which are individuals, who carries on the business or engages in the adventure or concern without a reasonable expectation of profit,

the person shall be deemed to have made the particular supply in the course of commercial activities of the person; and

- (b) where a person makes a supply by way of sale of personal property or a service that was acquired, imported, manufactured or produced by the person exclusively for the purpose of making an exempt supply of the property or service by way of sale, the person shall be deemed to have made the supply otherwise than in the course of commercial activities.
- (3) Acquisition, etc., of activities.—For the purposes of this Part,
- (a) to the extent that a person does anything (other than make a supply) in connection with the acquisition, establishment, disposition or termination of a commercial activity of the person, the person shall be deemed to have done that thing in the course of commercial activities of the person; and
- (b) to the extent that a person does anything (other than make a supply) in connection with the acquisition, establishment, disposition or termination of an activity of the person that is not a commercial activity, the person shall be deemed to have done that thing otherwise than in the course of commercial activities. S.C. 1993, c. 27, s. 18.
- **142.** (1) [Place of supply] General rule—in Canada.—For the purposes of this Part, subject to sections 143, 144 and 179, a supply shall be deemed to be made in Canada if
 - (a) in the case of a supply by way of sale of tangible personal property, the property is, or is to be, delivered or made available in Canada to the recipient of the supply;
 - (b) in the case of a supply of tangible personal property otherwise than by way of sale, possession or use of the property is given or made available in Canada to the recipient of the supply;
 - (c) in the case of a supply of intangible personal property,
 - (i) the property may be used in whole or in part in Canada and the recipient is resident in Canada or registered under Subdivision d of Division V, or
 - (ii) the property relates to real property situated in Canada, to tangible personal property ordinarily situated in Canada or to a service to be performed in Canada;
 - (d) in the case of a supply of real property or of a service in relation to real property, the real property is situated in Canada;
 - (e) in the case of a supply of a telecommunication service, the facility or instrument for the emission, transmission or reception of the service in respect of which the invoice for the supply is, or is to be, issued is ordinarily situated in Canada;
 - (f) the supply is a supply of a prescribed service; or
 - (g) in the case of a supply of any other service, the service is, or is to be, performed in whole or in part in Canada.
- (2) [Place of supply] General rule—outside Canada.—For the purposes of this Part, a supply shall be deemed to be made outside Canada if
 - (a) in the case of a supply by way of sale of tangible personal property, the property is, or is to be, delivered or made available outside Canada to the recipient of the supply;
 - (b) in the case of a supply of tangible personal property otherwise than by way of sale, possession or use of the property is given or made available outside Canada to the recipient of the supply;
 - (c) in the case of a supply of intangible personal property,

- (i) the property may not be used in Canada, or
- (ii) the property relates to real property situated outside Canada, to tangible personal property ordinarily situated outside Canada or to a service to be performed wholly outside Canada;
- (d) in the case of a supply of real property or a service in relation to real property, the real property is situated outside Canada;
- (e) in the case of a supply of a telecommunication service, the facility or instrument for the emission, transmission or reception of the service in respect of which the invoice for the supply is, or is to be, issued is ordinarily situated outside Canada;
- (f) the supply is a supply of a prescribed service; or
- (g) in the case of a supply of any other service, the service is, or is to be, performed wholly outside Canada.
- (3) Mobile and floating homes.—For the purposes of this section,
- (a) a floating home, and
- (b) a mobile home that is not affixed to land

shall each be deemed to be tangible personal property and not real property. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 19.

- **143.** (1) **Supply by non-resident.**—For the purposes of this Part, a supply of personal property or a service made in Canada by a non-resident person shall be deemed to be made outside Canada, unless
 - (a) the supply is made in the course of a business carried on in Canada;
 - (b) at the time the supply is made, the person is registered under Subdivision d of Division V; or
 - (c) the supply is the supply of an admission in respect of a place of amusement, a seminar, an activity or an event where the non-resident person did not acquire the admission from another person.
 - (2) [Repealed] S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 20.
- **143.1** Supply by mail or courier.—Notwithstanding subsections 142(2) and 143(1), for the purposes of this Part, a supply of prescribed tangible personal property made by a person who is registered under Subdivision d of Division V shall be deemed to be made in Canada if the property is sent, by mail or courier, to the recipient of the supply at an address in Canada. **S.C.** 1993, **c.** 27, **s.** 21.
- **144.** Supply before release.—For the purposes of this Part, a supply of goods that have been imported in compliance with the *Customs Act* or any other Act of Parliament that prohibits, controls or regulates the importation of goods, but have not been released before the goods are delivered or made available in Canada to the recipient of the supply, shall be deemed to be made outside Canada. S.C. 1990, c. 45, s. 12.
- **145.** (1) **Partnerships.**—For the purposes of this Part, an activity engaged in by a person as a member of a partnership shall be deemed
 - (a) to be an activity of the partnership; and
 - (b) not to be an activity of the person.
- (2) **Idem.**—Notwithstanding subsection (1), where a corporation that is a member of a partnership acquires or imports, at a time when the corporation is registered under Subdivision

d of Division V, property or a service for consumption, use or supply in the course of an activity of the partnership, except where the property or service was acquired or imported by the partnership, for the purpose of determining an input tax credit in respect of the acquisition or importation of the property or service,

- (a) the corporation shall be deemed to be engaged in that activity; and
- (b) the partnership shall be deemed not to have acquired or imported the property or service at that time. S.C. 1990, c. 45, s. 12.
- **146.** Supplies by governments and municipalities.—For the purposes of this Part, the following supplies, when made for consideration by a government or municipality or a board, commission or other body established by a government or municipality, shall, for greater certainty, be deemed to be made in the course of a commercial activity, except where the supply is an exempt supply:
 - (a) a supply of a service of testing or inspecting any property for the purpose of verifying or certifying that the property meets particular standards of quality or is suitable for consumption, use or supply in a particular manner;
 - (b) a supply to a consumer of a right to hunt or fish;
 - (c) a supply of a right to take or remove forestry products, products that grow in water, fishery products, minerals or peat, where the supply is made to
 - (i) a consumer, or
 - (ii) a person who is not a registrant and who acquires the right in the course of a business of the person of making supplies of the products, minerals or peat to consumers;
 - (d) a supply of a licence, permit, quota or similar right in respect of the importation of alcoholic beverages; and
 - (e) a supply of a right to enter, to have access to or to use property of the government, municipality or other body. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 22.
 - **147.** [Added S.C. 1990, c. 45, s. 12; repealed S.C. 1994, c. 9, s. 5.]

Small Suppliers

- **148.** (1) **Small suppliers.**—For the purposes of this Part, a person is a small supplier throughout a particular calendar quarter and the first month immediately following the particular calendar quarter if
 - (a) the total of all amounts each of which is the value of the consideration (other than consideration referred to in section 167.1 that is attributable to goodwill of a business) that became due in the four calendar quarters immediately preceding the particular calendar quarter, or that was paid in those four calendar quarters without having become due, to the person or an associate of the person at the beginning of the particular calendar quarter for taxable supplies (other than supplies of financial services and supplies by way of sale of capital property of the person or associate) made inside or outside Canada by the person or associate

does not exceed the total of

- (b) \$30,000, and
- (c) where, in the four calendar quarters immediately preceding the particular calendar quarter, the person or an associate of the person at the beginning of the particular calendar

quarter made a taxable supply of a right to participate in a game of chance or is deemed, under section 187, to have made a supply in respect of a bet and the supply is a taxable supply, the total of all amounts each of which is

- (i) an amount of money paid or payable by the person or the associate as a prize or winnings in the game or in satisfaction of the bet, or
- (ii) consideration paid or payable by the person or the associate for property or a service that is given as a prize or winnings in the game or in satisfaction of the bet.
- (2) Exception.—Notwithstanding subsection (1), where at any time in a calendar quarter
- (a) the total of all amounts each of which is the value of the consideration (other than consideration referred to in section 167.1 that is attributable to goodwill of a business) that became due in the calendar quarter, or that was paid in that calendar quarter without having become due, to a person or an associate of the person at the beginning of the calendar quarter for taxable supplies (other than supplies of financial services and supplies by way of sale of capital property of the person or associate) made inside or outside Canada by the person or associate

exceeds the total of

- (b) \$30,000, and
- (c) where, in the calendar quarter, the person or an associate of the person at the beginning of the calendar quarter made a taxable supply of a right to participate in a game of chance or is deemed, under section 187, to have made a supply in respect of a bet and the supply is a taxable supply, the total of all amounts each of which is
 - (i) an amount of money paid or payable by the person or the associate as a prize or winnings in the game or in satisfaction of the bet, or
 - (ii) consideration paid or payable by the person or the associate for property or a service that is given as a prize or winnings in the game or in satisfaction of the bet.

the person is not a small supplier throughout the period beginning immediately before that time and ending on the last day of the calendar quarter.

- (3) **Application.**—This section does not apply to a non-resident person who makes a supply in Canada of admissions in respect of a place of amusement, a seminar, an activity or an event and whose only business carried on in Canada is the making of such supplies.
- (4) **Meaning of "associate".**—In this section, "associate" of a particular person at any time means another person who is associated at that time with the particular person. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 23.
- **148.1** (1) **Meaning of "gross revenue".**—In this section, "gross revenue" of a person for a fiscal year of the person means the amount, if any, by which
 - (a) the total of all amounts each of which is
 - (i) a gift that is received or becomes receivable (depending on the method, in this paragraph referred to as the "accounting method", followed by the person in determining the person's revenue for the year) by the person during the fiscal year.
 - (ii) a grant, subsidy, forgivable loan or other assistance (other than a refund or rebate of, or credit in respect of, taxes, duties or fees imposed by an Act of Parliament or the legislature of a province) in the form of money that is received or becomes receivable (depending on the accounting method) by the person during the fiscal year from a government, municipality or other public authority,

- (iii) revenue that is or would be, if the person were a taxpayer under the *Income Tax Act*, included for the purposes of that Act in determining the person's income for the fiscal year from property, a business, an adventure or concern in the nature of trade or other source and that is not included in subparagraph (ii),
- (iv) an amount that is or would be, if the person were a taxpayer under the *Income Tax Act*, a capital gain for the fiscal year for the purposes of that Act from the disposition of property of the person, or
- (v) other revenue of any kind whatever (other than an amount that is or would be, if the person were a taxpayer under the *Income Tax Act*, included in determining the amount of a capital gain or loss of the person for the purposes of that Act) that is received or becomes receivable (depending on the accounting method) by the person during the fiscal year,

and that is not included in determining the total under this paragraph for a preceding fiscal year of the person,

exceeds

- (b) the total of all amounts each of which is or would be, if the person were a taxpayer under the *Income Tax Act*, a capital loss for the fiscal year for the purposes of that Act from the disposition of property of the person.
- (2) Charity as small supplier.—For the purposes of this Part, a person who is a charity at any time in a particular fiscal year of the person is a small supplier throughout the particular fiscal year if
 - (a) the particular fiscal year is the first fiscal year of the person;
 - (b) the particular fiscal year is the second fiscal year of the person and the gross revenue of the person for the first fiscal year of the person was \$175,000 or less; or
 - (c) the particular fiscal year is not the first or second fiscal year of the person and the gross revenue of the person for either of the two fiscal years of the person immediately preceding the particular fiscal year was \$175,000 or less. S.C. 1994, c. 9, s. 6.

Financial Institutions

- **149.** (1) **Financial institutions.**—For the purposes of this Part, a person is a financial institution throughout a particular taxation year of the person if
 - (a) the person is
 - (i) a bank,
 - (ii) a corporation that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee.
 - (iii) a person whose principal business is as a trader or dealer in, or as a broker or salesperson of, financial instruments or money,
 - (iv) a credit union.
 - (v) an insurer or any other person whose principal business is providing insurance under insurance policies,
 - (vi) a segregated fund of an insurer,
 - (vii) the Canada Deposit Insurance Corporation,

- (viii) a person whose principal business is the lending of money or the purchasing of debt securities or a combination thereof,
- (ix) an investment plan,
- (x) a person providing services referred to in section 158, or
- (xi) a corporation deemed under section 151 to be a financial institution,

at any time in the particular year; or

- (b) except where the person is, at the beginning of the particular year, a charity (within the meaning of subsection 259(1)), municipality, school authority, hospital authority, public college or university or is, on the last day of the taxation year of the person immediately preceding the particular year, a qualifying non-profit organization within the meaning of subsection 259(2),
 - (i) the total of all amounts each of which is an amount that is included in computing, for the purposes of the *Income Tax Act*, the person's income, or, where the person is an individual, the person's income from a business, for the taxation year of the person immediately preceding the particular year and that is interest, a dividend (other than a dividend in kind or a patronage dividend) or a separate fee or charge for a financial service

exceeds either

- (ii) 10% of the total of
 - (A) the amount that would, but for subsection (4), be the total described in subparagraph (i), and
 - (B) the total of all consideration that became due in that preceding taxation year, or that was paid in that preceding taxation year without becoming due, to the person for supplies (other than supplies by way of sale of capital property of the person or supplies of financial services) made by the person, or
- (iii) the amount determined by the formula

$$10,000,000 \times \frac{A}{365}$$

where A is the number of days in that preceding taxation year.

- (2) Amalgamations.—For the purposes of this Part, where
- (a) at any time two or more corporations (in this subsection referred to as the "predecessors") are merged or amalgamated to form one corporation (in this subsection referred to as the "new corporation"), and
- (b) the principal business of the new corporation immediately after that time is the same as or similar to the business of one or more of the predecessors that immediately before that time was a financial institution,

the new corporation is a financial institution throughout the taxation year of the new corporation that began at that time.

- (3) Acquisition of business.—For the purposes of this Part, where
- (a) a particular person, at any time in a taxation year of the particular person, acquires a business as a going concern from another person who was immediately before that time a financial institution, and

(b) immediately after that time the principal business of the particular person is the business so acquired.

the particular person is a financial institution throughout the part of that taxation year that is after that time.

- (4) **Exclusion of interest and dividend.**—In determining a total for a person under subparagraph (1)(b)(i), there shall not be included interest, or any dividend, from a corporation related to the person.
 - (5) Meaning of "investment plan".—In this section, "investment plan" means
 - (a) a trust governed by
 - (i) a registered pension plan,
 - (ii) an employees profit sharing plan,
 - (iii) a registered supplementary unemployment benefit plan,
 - (iv) a registered retirement savings plan,
 - (v) a deferred profit sharing plan,
 - (vi) a registered education savings plan,
 - (vii) a registered retirement income fund,
 - (viii) an employee benefit plan,
 - (ix) an employee trust,
 - (x) a mutual fund trust,
 - (xi) a pooled fund trust,
 - (xii) a unit trust, or
 - (xiii) a retirement compensation arrangement,

as each of those terms is defined for the purposes of the *Income Tax Act* or the *Income Tax Regulations*;

- (b) an investment corporation, as that term is defined for the purposes of that Act;
- (c) a mortgage investment corporation, as that term is defined for the purposes of that Act;
- (d) a mutual fund corporation, as that term is defined for the purposes of that Act;
- (e) a non-resident owned investment corporation, as that term is defined for the purposes of that Act; and
- (f) a corporation exempt from tax under that Act by reason of paragraph 149(1)(0.1) or (0.2) of that Act. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 24.
- 150. (1) Election for exempt supplies.—For the purposes of this Part other than Division IV, where at any time a member of a closely related group of which a listed financial institution is a member files an election made jointly by the member and a corporation that is also a member of the group at that time, every supply between the member and the corporation of property by way of lease, licence or similar arrangement or of a service that is made at a time when the election is in effect and that would, but for this subsection, be a taxable supply shall be deemed to be a supply of a financial service.
- (2) **Joint ventures.**—Subsection (1) does not apply in respect of property held or services rendered by a member of a closely related group as a participant in a joint venture with another person at a time when an election under section 273 is in effect between the member and the other person.

- (3) **Form and manner of filing.**—An election under subsection (1) relating to supplies between a member of a closely related group and a corporation shall
 - (a) be made in prescribed form containing prescribed information;
 - (b) specify the day the election is to become effective; and
 - (c) be filed by the member with the Minister in prescribed manner on or before the day on or before which a return under Division V for the reporting period of the member in which the election is to become effective is required to be filed.
- (4) **Effect of election.**—An election under subsection (1) shall be effective for the period beginning on the day specified in the election and ending on the earliest of
 - (a) the day either member ceases to be a member of the closely related group,
 - (b) the first day the closely related group does not include a listed financial institution (other than a person that is a financial institution only by reason of section 151), and
 - (c) a day that the members specify in a notice of revocation in prescribed form containing prescribed information filed jointly by the members with the Minister in prescribed manner, which day is at least three hundred and sixty-five days after the day specified in the election.
- (5) **Subsequent elections.**—Where an election made under subsection (1) jointly by a member of a closely related group and a corporation ceases to be effective, the member and the corporation shall not thereafter make an election jointly under subsection (1) without the written concurrence of the Minister.
 - (6) Credit unions deemed to have elected.—For the purposes of this Part,
 - (a) every credit union shall be deemed to be at all times a member of a closely related group of which every other credit union is a member;
 - (b) every credit union shall be deemed to have made an election under subsection (1) with every other credit union that is in effect at all times; and
 - (c) every supply of tangible personal property by a credit union, other than a capital property of the credit union, to another credit union shall be deemed to be a supply of a financial service.
 - (d) [Repealed.]
- (7) **Mutual insurance group—deemed election.** For the purposes of this Part, every member of a mutual insurance group shall be deemed
 - (a) to be at all times a member of a closely related group of which every other member of the mutual insurance group is a member; and
 - (b) to have made, with every other member of the group, an election under subsection (1) that is in effect at all times, S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 25.
- **151.** Effect of election under subsection 150(1).—For the purposes of this Part, where a corporation that is a member of a closely related group has made an election under subsection 150(1), the corporation shall be deemed to be a financial institution throughout the period during which the election is in effect. S.C. 1990, c. 45, s. 12.

Consideration

152. (1) **When consideration due.** —For the purposes of this Part, the consideration, or a part thereof, for a taxable supply shall be deemed to become due on the earliest of

- (a) the earlier of the day the supplier first issues an invoice in respect of the supply for that consideration or part and the date of that invoice,
- (b) the day the supplier would have, but for an undue delay, issued an invoice in respect of the supply for that consideration or part, and
- (c) the day the recipient is required to pay that consideration or part to the supplier pursuant to an agreement in writing.
- (2) Consideration under leases, etc.—Notwithstanding subsection (1), where property is supplied by way of lease, licence or similar arrangement under an agreement in writing, the consideration, or any part thereof, for the supply shall, for the purposes of this Part, be deemed to become due on the day the recipient is required to pay the consideration or part to the supplier pursuant to the agreement.
- (3) **Payment.**—For the purposes of this Part, where consideration that is not money is given or required to be given, the consideration that is given or required to be given shall be deemed to be paid or required to be paid, as the case may be. S.C. 1990, c. 45, s. 12.
- 153. (1) Value of consideration.—Subject to this Division, the value of the consideration, or any part thereof, for a supply shall, for the purposes of this Part, be deemed to be equal to
 - (a) where the consideration or that part is expressed in money, the amount of the money; and
 - (b) where the consideration or that part is other than money, the fair market value of the consideration or that part at the time the supply was made.
 - (2) Combined consideration.—For the purposes of this Part, where
 - (a) consideration is paid for a supply and other consideration is paid for one or more other supplies or matters, and
 - (b) the consideration for one of the supplies or matters exceeds the consideration that would be reasonable if the other supply were not made or the other matter were not provided,

the consideration for each of the supplies and matters shall be deemed to be that part of the total of all amounts, each of which is consideration for one of those supplies or matters, that may reasonably be attributed to each of those supplies and matters.

(3) Barters between registrants.—Where

- (a) the consideration or a part of the consideration for a supply of property of a particular class or kind is property of that class or kind,
- (b) both the supplier and the recipient are registrants, and
- (c) the property is acquired by the recipient and the consideration or that part thereof is acquired by the supplier as inventory for use exclusively in commercial activities of the recipient or supplier, as the case may be,

the value of the consideration or that part thereof shall be deemed to be nil. S.C. 1990, c. 45, s. 12.

154. Other taxes.—For the purposes of this Part, the consideration for a supply includes any tax, duty or fee (other than the tax payable under this Part by the recipient in respect of the supply or a prescribed tax, duty or fee) imposed under an Act of Parliament or the legislature of a province on the recipient or the supplier of the supply in respect of the supply, production.

importation, consumption or use of the property or service supplied that is payable by the recipient or the supplier. S.C. 1990, c. 45, s. 12.

- 155. (1) Non-arm's length supplies.—For the purposes of this Part, where a supply of property or a service is made between persons not dealing with each other at arm's length for no consideration or for consideration less than the fair market value of the property or service at the time the supply is made, and the recipient of the supply is not a registrant who is acquiring the property or service for consumption, use or supply exclusively in the course of commercial activities of the recipient,
 - (a) if no consideration is paid for the supply, the supply shall be deemed to be made for consideration, paid at that time, of a value equal to the fair market value of the property or service at that time; and
 - (b) if consideration is paid for the supply, the value of the consideration shall be deemed to be equal to the fair market value of the property or service at that time.
- (2) Exception.—Subsection (1) does not apply to a supply included in any of sections 6 to 10 of Part VI of Schedule V. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 26.
- **156.** (1) **Meaning of "specified member".**—In this section, "specified member" of a closely related group means a corporation
 - (a) that is a member of the group;
 - (b) that is not a party to an election under subsection 150(1); and
 - (c) all or substantially all of the property of which (other than financial instruments) was last manufactured, constructed, produced, acquired or imported by the corporation for consumption, use or supply exclusively in the course of commercial activities of the corporation or, where the corporation has no property (other than financial instruments), all or substantially all of the supplies made by which are taxable supplies.
- (2) Election for nil consideration.—For the purposes of this Part, where a specified member of a closely related group elects jointly with a corporation that is also a specified member of the group, every taxable supply (other than a supply of property, or of a service, that is not acquired by the recipient of the supply for consumption, use or supply exclusively in the course of commercial activities of the recipient and a supply by way of sale of real property) made between the specified member and the corporation at a time when the election is in effect shall be deemed to have been made for no consideration.
- (3) **Cessation.**—An election under subsection (2) made jointly by a person who is a specified member of a closely related group and a corporation ceases to have effect on the earliest of
 - (a) the day the person ceases to be a specified member of the group,
 - (b) the day the corporation ceases to be a specified member of the group, and
 - (c) the day a revocation of the election made jointly by the person and the corporation takes effect.
- (4) **Form of election and revocation.** –An election under subsection (2) and a revocation of the election shall be made in prescribed form containing prescribed information and shall specify the effective date thereof, S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 27.
 - 157. [Added S.C. 1990, c. 45, s. 12; repealed S.C. 1993, c. 27, s. 28.]
- **158.** Tax refund discounts.—For the purposes of this Part, where a discounter (within the meaning of the *Tax Rebate Discounting Act*) pays an amount to a person to acquire from the

person a right to a refund of tax (within the meaning of that Act[)], notwithstanding section 139, the discounter shall be deemed to have made

- (a) a taxable supply of a service for consideration equal to the lesser of
 - (i) $\frac{2}{3}$ of the amount, if any, by which the amount of the refund exceeds the amount paid by the discounter to the person to acquire the right, and
 - (ii) \$30; and
- (b) a separate supply of a financial service for consideration equal to the amount by which the amount of the refund exceeds the total of the amount paid by the discounter to the person to acquire the right and the amount determined under paragraph (a). S.C. 1990, c. 45, s. 12.
- 159. Value in Canadian currency.—Where the consideration for a supply is expressed in a foreign currency, the value of the consideration shall, for the purposes of this Part, be computed on the basis of the value of that foreign currency in Canadian currency on the day the tax is payable, or on such other day as is acceptable to the Minister. S.C. 1990, c. 45, s. 12.
- **160.** Coin-operated devices.—Where a supply is made, and the consideration therefor is paid, by means of a coin-operated device, the following rules apply for the purposes of this Part:
 - (a) the recipient shall be deemed to have
 - (i) received the supply,
 - (ii) paid the consideration for the supply, and
 - (iii) paid any tax payable in respect of the supply,
 - on the day the consideration for the supply is inserted into the device; and
 - (b) the supplier shall be deemed to have
 - (i) made the supply,
 - (ii) received the consideration for the supply, and
 - (iii) collected any tax payable in respect of the supply,

on the day the consideration for the supply is removed from the device. S.C. 1990, c. 45, s. 12.

- 161. Early or late payments.—For the purposes of this Part, where tangible personal property or services are supplied and the amount of consideration for the supply shown in the invoice in respect of the supply may be reduced if the amount thereof is paid within a time specified in the invoice or an additional amount is charged to the recipient by the supplier if the amount of the consideration is not paid within a reasonable period specified in the invoice, the consideration due shall be deemed to be the amount of consideration shown in the invoice. S.C. 1990, c. 45, s. 12.
 - 162. (1) Natural resources.—For the purposes of this Part, the supply of
 - (a) a right to explore for or exploit a mineral deposit, a peat bog or deposit of peat or a forestry, water or fishery resource,
 - (b) a right of entry or user relating to a right referred to in paragraph (a), or
 - (c) a right to an amount computed by reference to the production (including profit) from, or to the value of production from, any such deposit, bog or resource,

shall be deemed not to be a supply and any consideration paid or due, or any fee or royalty charged or reserved, in respect of the right shall be deemed not to be consideration for the right.

- (2) **Exception.**—Subsection (1) does not apply to a supply of a right to take or remove forestry products, products that grow in water, fishery products, minerals or peat or a right of entry or user relating thereto, where the supply is made to
 - (a) a consumer; or
 - (b) a person who is not a registrant and who acquires the right in the course of a business of the person of making supplies of the products, minerals or peat to consumers. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 29.
- **162.1 Rolling stock penalties and demurrage.**—For the purposes of this Part, an amount that is paid
 - (a) as or on account of demurrage, or
 - (b) by one railway corporation to another railway corporation as or on account of a penalty for failure to return rolling stock within a stipulated time,
- shall be deemed not to be consideration for a supply. S.C. 1993, c. 27, s. 29.
- **163.** (1) **Taxable portion of tour package.**—For the purposes of this Part, the consideration for a supply of the taxable portion of a tour package shall be deemed to be
 - (a) where the supply is made by the first supplier of the tour package, the amount determined by the formula

$A \times B$

where

- A is the taxable percentage of the package at the time the supply is made, and
- B is the total consideration for the entire tour package; and
- (b) where the supply is made by any other person, the amount determined by the formula

$A \times B$

where

- A is the percentage that the consideration for the supply to the person of the taxable portion of the package is of the total consideration paid or payable by the person for the entire tour package, and
- B is the total consideration paid or payable to the person for the entire tour package.
- (2) **Taxable and non-taxable parts.**—For the purposes of this Part, the provision of the part of a tour package that is the taxable portion of the package and the provision of the remaining part of the package shall each be deemed to be a separate supply, and not to be incidental to the other.
 - (3) **Definitions.**—In this section and in Part VI of Schedule VI,
- "base fraction".—"base fraction", at a particular time, of a tour package means the fraction determined by the formula

$\frac{A}{B}$

where

A is the part of the amount that would be charged by the first supplier of the package for a supply at that time of the package that is, at that time, reasonably attributable to the taxable portion of the package, and

- B is the amount that would be charged by the first supplier of the package for a supply at that time of the package;
- "first supplier".—"first supplier" of a tour package means the person who first supplies the package in Canada;
- "initial taxable percentage".—"initial taxable percentage" of a tour package means the fraction determined, at the time the first supplier of the package determines the amount to be charged by that supplier for a supply of the package, by the formula

 $\frac{A}{B}$

where

A is the part of that amount that is, at that time, reasonably attributable to the taxable portion of the package, and

B is that amount:

- "taxable percentage".—"taxable percentage", at a particular time, of a tour package means
 - (a) where the difference between the base fraction at that time of the package and the initial taxable percentage of the package or the base fraction of the package at an earlier time is more than 10%, the base fraction of the package at the particular time, and
 - (b) in any other case, the initial taxable percentage of the package;
- "taxable portion".—"taxable portion" of a tour package means all property and services included in the tour package and in respect of which tax under Division II would be payable if the property or service were supplied otherwise than as part of a tour package;
- "tour package".—"tour package" means a combination of two or more services, or of property and services, that includes transportation services, accommodation, a right to use a campground or trailer park, or guide or interpreter services, where the property and services are supplied together for an all-inclusive price. S.C. 1990, c. 45, s. 12.
- $\textbf{164.} \ (\textbf{1)} \ \textbf{Donations to charities and registered parties.} \\ \textbf{—} \text{For the purposes of this Part, } \\ \textbf{where}$
 - (a) a charity or registered party makes a supply of an admission to a fund-raising dinner, ball, concert, show or like fund-raising event, or
 - (b) a registered party makes a supply to a person, part of the consideration for the supply may reasonably be regarded as an amount (in this subsection referred to as the "amount contributed") that is contributed to the registered party and the person may claim a deduction or credit in determining tax payable by the person under the *Income Tax Act* or a similar Act of the legislature of a province in respect of the total of such amounts contributed,

the following rules apply:

- (c) where paragraph (a) applies, the value of the consideration for the supply shall be deemed to be the lesser of the actual value of the consideration for the supply and the fair market value of the supply, and
- (d) where paragraph (b) applies, the amount contributed shall be deemed not to be consideration for the supply.
- (2) **Meaning of "registered party".**—For the purposes of subsection (1), "registered party" means a party (including any regional or local association of the party), a candidate or a referendum committee governed by an Act of Parliament or a law of a province that imposes

requirements relating to election finances or referendum expenses. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 30.

- **164.1** (1) **Meaning of "feed".**—For the purposes of this section, "feed" means
- (a) grain, seed or fodder that is described in section 2 of Part IV of Schedule VI and used as feed for farm livestock that is ordinarily raised or kept to produce, or to be used as, food for human consumption or to produce wool;
- (b) feed that is a complete feed, supplement, macro-premix, micro-premix or mineral feed (other than a trace mineral salt feed), the supply of which in bulk quantities of at least 20 kg would be a zero-rated supply included in Part IV of Schedule VI; and
- (c) by-products of the food processing industry and plant or animal products, the supply of which in bulk quantities of at least 20 kg would be a zero-rated supply included in Part IV of Schedule VI.
- (2) **Supplies by a feedlot.**—For the purposes of this Part, where, in the course of operating a feedlot that is a farming business within the meaning of the *Income Tax Act*, a person makes a supply of a service and the consideration for the supply (in this subsection referred to as the "total charge") includes a particular amount that is identified in the invoice or agreement in writing for the supply as being attributable to feed,
 - (a) the provision of the feed shall be deemed to be a supply separate from the supply of the service and not to be incidental to the provision of any other property or service;
 - (b) the portion, not exceeding 90%, of the total charge that is reasonably attributable to the feed and is included in the particular amount shall be deemed to be the consideration for the supply of the feed; and
 - (c) the difference between the total charge and the consideration for the supply of the feed shall be deemed to be the consideration for the supply of the service. S.C. 1993, c. 27, s. 30; S.C. 1994, c. 9, s. 7.
 - **164.2 Payments by unions or associations.** For the purposes of this Part, where
 - (a) an individual, because of membership in a trade union or association referred to in paragraph 189(a), participates in activities of the union or association and, as a consequence, is unable to perform duties, under a contract of employment, for the individual's employer during a period during which the individual would, were it not for the individual's participation in those activities, be obligated to provide such services, and
 - (b) the union or association pays an amount to the employer as compensation for expenses incurred by the employer as a consequence of the individual's participation in those activities or for remuneration or benefits given by the employer to the individual in respect of that period,

the amount shall be deemed not to be consideration for a supply. S.C. 1993, c. 27, s. 30.

DIVISION II

Goods and Services Tax

Subdivision a. Imposition of tax

165. (1) **Imposition of tax.** –Subject to this Part, every recipient of a taxable supply made in Canada shall pay to Her Majesty in right of Canada a tax in respect of the supply equal to 7% of the value of the consideration for the supply.

- (2) **Zero-rated supply.**—The rate of the tax in respect of a taxable supply that is a zero-rated supply is 0%.
- (3) **Pay telephones.**—Where the consideration for a supply of a telephone service is paid by depositing coins in a coin-operated telephone, the tax payable in respect of the supply is equal to
 - (a) nil where the amount deposited for the supply is less than \$0.70;
 - (b) \$0.05 where the total amount deposited for the supply is \$0.70; and
 - (c) in any other case, the amount computed in accordance with subsection (1), except that where that amount is the total of a multiple of \$0.05 and a fraction of \$0.05, the fraction
 - (i) if less than \$0.025, may be disregarded for the purposes of this section, and
 - (ii) if equal to or greater than \$0.025, shall be deemed, for the purposes of this section, to be an amount equal to \$0.05.
- (4) **Fractional amounts.**—Where the tax determined by reference to the total consideration for taxable supplies included in an invoice includes a fraction of a cent, the fraction
 - (a) if less than half of a cent, may be disregarded for the purposes of this section; and
 - (b) if equal to or greater than half of a cent, shall be deemed, for the purposes of this section, to be an amount equal to one cent. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 31.
- 166. Supply by small supplier not a registrant.—Where a person makes a taxable supply, other than a supply of real property by way of sale, and the consideration or a part thereof for the supply becomes due, or is paid before it becomes due, at a time when the person is a small supplier who is not a registrant, that consideration or part thereof, as the case may be, shall not be included in calculating the tax payable in respect of the supply. S.C. 1990, c. 45, s. 12.
- 167. (1) Supply of assets of business.—Where a supplier makes a supply of a business or part of a business that was established or carried on by the supplier or that was established or carried on by another person and acquired by the supplier, and, under the agreement for the supply, the recipient is acquiring ownership, possession or use of all or substantially all of the property that can reasonably be regarded as being necessary for the recipient to be capable of carrying on the business or part as a business,
 - (a) for the purposes of this Part, the supplier shall be deemed to have made a separate supply of each property and service that is supplied under the agreement for consideration equal to that part of the consideration for the supply of the business or part that can reasonably be attributed to that property or service; and
 - (b) except where the supplier is a registrant and the recipient is not a registrant, the supplier and the recipient may make a joint election in prescribed form containing prescribed information to have subsection (1.1) apply to those supplies.
- (1.1) Effect of election.—Where a supplier and a recipient make a joint election under subsection (1) in respect of a supply of a business or part of a business and the recipient, if a registrant, files the election with the Minister not later than the day on or before which the return under Division V is required to be filed for the recipient's first reporting period in which tax would, but for this subsection, have become payable in respect of the supply of any property or service made under the agreement for the supply of the business or part, or on such later day as the Minister may determine on application of the recipient,
 - (a) no tax is payable in respect of a supply of any property or service made under the agreement other than

- (i) a taxable supply of a service that is to be rendered by the supplier,
- (ii) a taxable supply of property by way of lease, licence or similar arrangement, and
- (iii) where the recipient is not a registrant, a taxable supply by way of sale of real property; and

(b) for the purposes of this Part,

- (i) where, but for this subsection, tax would have been payable by the recipient in respect of a supply made under the agreement of property that was capital property of the supplier and that is being acquired by the recipient for use as capital property of the recipient, the recipient shall be deemed to have so acquired the property for use exclusively in the course of commercial activities of the recipient, and
- (ii) where, notwithstanding this subsection, tax would not have been payable by the recipient in respect of a supply made under the agreement of property that was capital property of the supplier and that is being acquired by the recipient for use as capital property of the recipient, the recipient shall be deemed to have so acquired the property for use exclusively in activities of the recipient that are not commercial activities.

(2) Supply of business assets of deceased.—Where

- (a) immediately before death, an individual held property for consumption, use or supply in the course of a business carried on immediately before the individual's death,
- (b) the personal representative of the deceased individual makes a supply, in accordance with the deceased individual's will or the laws relating to the succession of property on death, of the property to another individual who is a beneficiary of the deceased individual's estate and a registrant,
- (c) the property is received for consumption, use or supply in the course of commercial activities of the other individual, and
- (d) the personal representative and the other individual jointly elect under this subsection, no tax is payable in respect of the supply and the other individual shall, for the purposes of this Part, be deemed to have acquired the property for use exclusively in commercial activities of the individual, S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 32; S.C. 1994, c. 9, s. 8.
- 167.1 Goodwill.—For the purposes of this Part, where a supplier makes a supply of a business or part of a business that was established or carried on by the supplier or that was established or carried on by another person and acquired by the supplier, the recipient is acquiring ownership, possession or use of all or substantially all of the property that can reasonably be regarded as being necessary for the recipient to be capable of carrying on the business or part as a business, and part of the consideration for the supply can reasonably be attributed to goodwill of the business or part, that part of the consideration shall not be included in calculating the tax payable in respect of the supply. S.C. 1993, c. 27, s. 33.
- 167.2 (1) Supplies to non-resident persons of admissions to conventions. Where the sponsor of a convention makes a taxable supply to a non-resident person of an admission to the convention, that portion of the consideration for the admission that is reasonably attributable to the provision of the convention facility or related convention supplies shall not be included in calculating the tax payable in respect of the supply.
- (2) **Supplies to non-resident exhibitors.** Where a sponsor of a convention makes a taxable supply by way of lease, licence or similar arrangement to a non-resident person of real property that is acquired by the person exclusively for use as a site for the promotion, at the convention, of property or services supplied by, or of a business of, the person, no tax is payable

in respect of that supply to the person or in respect of any supply by the sponsor to the person of property or services that are acquired by the person for consumption or use as related convention supplies in respect of the convention. S.C. 1993, c. 27, s. 34.

When Tax Payable

- **168.** (1) **General rule.**—Tax under this Division in respect of a taxable supply is payable by the recipient on the earlier of the day the consideration for the supply is paid and the day the consideration for the supply becomes due.
- (2) **Partial consideration.**—Notwithstanding subsection (1), where consideration for a taxable supply is paid or becomes due on more than one day,
 - (a) tax under this Division in respect of the supply is payable on each day that is the earlier of the day a part of the consideration is paid and the day that part becomes due; and
 - (b) the tax that is payable on each such day shall be calculated on the value of the part of the consideration that is paid or becomes due, as the case may be, on that day.
- (3) **Supply completed.**—Notwithstanding subsections (1) and (2), where all or any part of the consideration for a taxable supply has not been paid or become due on or before the last day of the calendar month immediately following the first calendar month in which
 - (a) where the supply is of tangible personal property by way of sale, other than a supply described in paragraph (b) or (c), the ownership or possession of the property is transferred to the recipient,
 - (b) where the supply is of tangible personal property by way of sale under which the supplier delivers the property to the recipient on approval, consignment, sale-or-return basis or other similar terms, the recipient acquires ownership of the property or makes a supply of it to any person, other than the supplier, or
 - (c) where the supply is under an agreement in writing for the construction, renovation or alteration of, or repair to,
 - (i) any real property, or
 - (ii) any ship or other marine vessel, and it may reasonably be expected that the construction, renovation, alteration or repair will require more than three months to complete,

the construction, renovation, alteration or repair is substantially completed,

tax under this Division in respect of the supply, calculated on the value of that consideration or part, as the case may be, is payable on that day.

- (4) Continuous supplies.—Subsection (3) does not apply in respect of a supply of water, electricity, natural gas, steam or any other property where the property is delivered or made available to the recipient on a continuous basis by means of a wire, pipeline or other conduit and the supplier invoices the recipient in respect of that supply on a regular or periodic basis.
- (5) Sale of real property.—Notwithstanding subsections (1) and (2), tax under this Division in respect of a taxable supply of real property by way of sale is payable
 - (a) in the case of a supply of a residential condominium unit where possession of the unit is transferred, after 1990 and before the condominium complex in which the unit is situated is registered as a condominium, to the recipient under the agreement for the supply, on the earlier of the day ownership of the unit is transferred to the recipient and the day that is sixty days after the day the condominium complex is registered as a condominium; and

- (b) in any other case, on the earlier of the day ownership of the property is transferred to the recipient and the day possession of the property is transferred to the recipient under the agreement for the supply.
- (6) Value not ascertainable.—Where under subsection (3) or (5) tax is payable on a day and the value of the consideration, or any part thereof, for the taxable supply is not ascertainable on that day.
 - (a) tax calculated on the value of the consideration or part, as the case may be, that is ascertainable on that day is payable on that day; and
 - (b) tax calculated on the value of the consideration or part, as the case may be, that is not ascertainable on that day is payable on the day the value becomes ascertainable.
- (7) **Retention of consideration.** Notwithstanding subsections (1), (2), (3), (5) and (6), where the recipient of a taxable supply retains, pursuant to
 - (a) an Act of Parliament or of the legislature of a province, or
 - (b) an agreement in writing for the construction, renovation or alteration of, or repair to, any real property or any ship or other marine vessel,
- a part of the consideration for the supply pending full and satisfactory performance of the supply, or any part thereof, tax under this Division, calculated on the value of that part of the consideration, is payable on the earlier of the day that part is paid and the day it becomes payable.
- (8) **Combined supply.**—For the purposes of this section, where a supply of any combination of service, personal property or real property (each of which is in this subsection referred to as an "element") is made and the consideration for each element is not separately identified,
 - (a) where the value of a particular element can reasonably be regarded as exceeding the value of each of the other elements, the supply of all of the elements shall be deemed to be a supply only of the particular element; and
 - (b) in any other case, the supply of all of the elements shall be deemed
 - (i) where one of the elements is real property, to be a supply only of real property, and
 - (ii) in any other case, to be a supply only of a service.
- (9) **Deposits.**—For the purposes of this section, a deposit (other than a deposit in respect of a covering or container in respect of which section 137 applies), whether refundable or not, given in respect of a supply shall not be considered as consideration paid for the supply unless and until the supplier applies the deposit as consideration for the supply. S.C. 1990, c. 45, s. 12.

Subdivision b. Input tax credits

169. (1) **General rule for credits.** Subject to this Part, where property or a service is supplied to or imported by a person and, during a reporting period of the person during which the person is a registrant, tax in respect of the supply or importation becomes payable by the person or is paid by the person without having become payable, the input tax credit of the person in respect of the property or service for the period is the amount determined by the formula

$A \times B$

where

A is the total of all tax in respect of the supply or importation that becomes payable by the

person during the reporting period or that is paid by the person during the period without having become payable; and

B is

- (a) where the tax is deemed under subsection 202(4) to have been paid in respect of the property on the last day of a taxation year of the person, the extent (expressed as a percentage of the total use of the property in the course of commercial activities and businesses of the person during that taxation year) to which the person used the property in the course of commercial activities of the person during that taxation year,
- (b) where the property or service is acquired or imported by the person for use in improving capital property of the person, the extent (expressed as a percentage) to which the person was using the capital property in the course of commercial activities of the person immediately after the capital property or a portion thereof was last acquired or imported by the person, and
- (c) in any other case, the extent (expressed as a percentage) to which the person acquired or imported the property or service for consumption, use or supply in the course of commercial activities of the person.
- (1.1) **Determining credit for improvement.**—Where a person acquires or imports property or a service partly for use in improving capital property of the person and partly for another purpose, for the purposes of determining an input tax credit of the person in respect of the property or service,
 - (a) the provision of that part of the property or service that is acquired or imported for use in improving the capital property and the provision of the remaining part of the property or service shall each be deemed to be a separate supply that is not incidental to the other;
 - (b) the tax payable in respect of the supply of that part of the property or service that is acquired or imported for use in improving the capital property shall be deemed to be equal to the amount determined by the formula

$A \times B$

where

- A is the tax payable (in this section referred to as the "total tax payable") by the person in respect of the supply or importation of the property or service, determined without reference to this section, and
- B is the extent (expressed as a percentage) to which the total consideration paid or payable by the person for the supply in Canada of the property or service or the value of the imported goods is or would be, if the person were a taxpayer under the *Income Tax Act*, included in determining the adjusted cost base to the person of the capital property for the purposes of that Act; and
- (c) the tax payable in respect of that part of the property or service that is not for use in improving the capital property shall be deemed to be equal to the difference between the total tax payable and the amount determined under paragraph (b).
- (1.2) **Determining credit for leased property.**—Where property is supplied by way of lease, licence or similar arrangement to a person for consideration that includes two or more periodic payments that are attributable to successive parts (each of which is referred to in this subsection as a "lease interval") of the period for which possession or use of the property is provided under the arrangement and tax in respect of the supply, calculated on a particular periodic payment, at any time becomes payable by the person or is paid by the person without

having become payable, for the purposes of determining an input tax credit of the person in respect of the property,

- (a) the person shall be deemed to have received, at that time, a separate supply of the property for the lease interval to which the particular periodic payment is attributable; and
- (b) the tax calculated on the particular periodic payment shall be deemed to be tax payable in respect of the separate supply.
- (1.3) **Determining credit for ongoing services.**—Where a service is supplied to a person for consideration that includes two or more payments that are attributable to different parts (each of which is referred to in this subsection as a "billing period") of the period during which the service is or is to be rendered under the agreement for the supply and tax in respect of the supply, calculated on a particular payment, at any time becomes payable by the person or is paid by the person without having become payable, for the purposes of determining an input tax credit of the person in respect of the service,
 - (a) the person shall be deemed to have received, at that time, a separate supply of the service rendered or to be rendered during the billing period to which the particular periodic payment is attributable; and
 - (b) the tax calculated on the particular payment shall be deemed to be tax payable in respect of the separate supply.
- (2) Credit for goods imported to provide commercial service.—Subject to this Part, where a registrant imports goods of a non-resident person who is not registered under Subdivision d of Division V for the purpose of making a taxable supply to the non-resident person of a commercial service in respect of the goods and, during a reporting period of the registrant, tax in respect of the importation becomes payable by the registrant or is paid by the registrant without having become payable, the input tax credit of the registrant in respect of the goods for the reporting period is an amount equal to that tax.
 - (3) [Repealed.]
- (4) **Required documentation.**—A registrant may not claim an input tax credit for a reporting period unless, before filing the return in which the credit is claimed,
 - (a) the registrant has obtained sufficient evidence in such form containing such information as will enable the amount of the input tax credit to be determined, including any such information as may be prescribed; and
 - (b) where the credit is in respect of real property supplied by way of sale to the registrant in circumstances in which subsection 221(2) applies, the registrant has filed the return required under subsection 228(4) to be filed with respect to the supply.
- (5) **Exemption.**—Where the Minister is satisfied that there are or will be sufficient records available to establish the particulars of any supply or importation or of any supply or importation of a specified class and the tax in respect of the supply or importation paid or payable under this Part, the Minister may
 - (a) exempt a specified registrant, a specified class of registrants or registrants generally from any of the requirements of subsection (4) in respect of that supply or importation or a supply or importation of that class; and
 - (b) specify terms and conditions of the exemption. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 35.
 - 170. (1) Restriction.—In determining an input tax credit of a registrant, no amount shall

be included in respect of the tax payable by the registrant in respect of the following supplies made to, or importations by, the registrant:

- (a) a supply of a membership, or a right to acquire a membership, in a club the main purpose of which is to provide dining, recreational or sporting facilities, except where the registrant acquires the membership or right, as the case may be, exclusively for supply in the ordinary course of a business of the registrant of supplying such memberships or rights;
- (b) a supply or an importation of property or a service that is acquired or imported by the registrant at any time in or before a reporting period of the registrant exclusively for the personal consumption, use or enjoyment (in this paragraph referred to as the "benefit") in that period of a particular individual who was, is or agrees to become an officer or employee of the registrant, or of another individual related to the particular individual, except where
 - (i) the registrant makes a taxable supply of the property or service to the particular individual or the other individual for consideration that becomes due in that period and that is equal to the fair market value of the property or service at the time the consideration becomes due, or
 - (ii) if no amount were payable by the particular individual for the benefit, no amount would be included under section 6 of the *Income Tax Act* in respect of the benefit in computing the income of the particular individual for the purposes of that Act; and
- (c) a supply made in or before a reporting period of the registrant of property, by way of lease, licence or similar arrangement, primarily for the personal consumption, use or enjoyment in that period of
 - (i) where the registrant is an individual, the registrant or another individual related to the registrant,
 - (ii) where the registrant is a partnership, an individual who is a member of the partnership or another individual who is an employee, officer or shareholder of, or related to, a member of the partnership,
 - (iii) where the registrant is a corporation, an individual who is a shareholder of the corporation or another individual related to the shareholder, and
 - (iv) where the registrant is a trust, an individual who is a beneficiary of the trust or another individual related to the beneficiary.

except where the registrant makes a taxable supply of the property in that period to such an individual for consideration that becomes due in that period and that is equal to the fair market value of the supply at the time the consideration becomes due.

- (2) **Idem.**—In determining an input tax credit of a registrant, no amount shall be included in respect of the tax payable by the registrant in respect of a property or service supplied to, or goods imported by, the registrant, except to the extent that
 - (a) the consumption or use of property, services or goods of such quality, nature or cost is reasonable in the circumstances, having regard to the nature of the commercial activities of the registrant; and
 - (b) the amount is calculated on consideration for the property or service or on a value of the goods that is reasonable in the circumstances. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 36.

Subdivision c. Special cases

Becoming and Ceasing to be Registrant

- 171. (1) Person becoming registrant.—Where at any time a person becomes a registrant and immediately before that time the person was a small supplier, for the purpose of determining an input tax credit of the person, the person shall be deemed
 - (a) to have received, at that time, a supply by way of sale of each property of the person that was held immediately before that time for consumption, use or supply in the course of commercial activities of the person; and
 - (b) to have paid, at that time, tax in respect of the supply equal to the amount determined by the formula

$A \times B$

where

A is the lesser of

- (i) the total (in this subsection referred to as the "total tax charged in respect of the property") of the tax that, before that time, became payable or was paid by the person in respect of the last acquisition or importation of the property by the person and the tax that, before that time, became payable or was paid by the person in respect of improvements to the property acquired or imported by the person after the property was last so acquired or imported, and
- (ii) tax calculated on the fair market value of the property at that time, and

B is

- (i) where the person was entitled to claim a rebate under section 259 in respect of any tax included in the total tax charged in respect of the property, the difference between 100% and the percentage prescribed for the purposes of that section that applied in determining the amount of that rebate, and
- (ii) in any other case, 100%.
- (2) **Services and rental property.**—Subject to this Division, where at any time a person becomes a registrant, in determining the input tax credits of the person for the first reporting period of the person ending after that time,
 - (a) there may be included the total of any tax that became payable by the person before that time, to the extent that the tax was payable in respect of services to be supplied to the person after that time for consumption, use or supply in the course of commercial activities of the person or was calculated on the value of consideration that is a rent, royalty or similar payment attributable to a period after that time in respect of property that is used in the course of commercial activities of the person; and
 - (b) there shall not be included any tax that becomes payable by the person after that time, to the extent that the tax is payable in respect of services supplied to the person before that time or is calculated on the value of consideration that is a rent, royalty or similar payment attributable to a period before that time.
- (3) **Properties on ceasing to be registrant.**—For the purposes of this Part, where a person ceases at any time to be a registrant,
 - (a) the person shall be deemed

- (i) to have made, immediately before that time, a supply of each property of the person (other than capital property) that immediately before that time was held by the person for consumption, use or supply in the course of commercial activities of the person and to have collected, immediately before that time, tax in respect of the supply, calculated on the fair market value of the property at that time, and
- (ii) to have received, at that time, a supply of the property by way of sale and to have paid, at that time, tax in respect of the supply equal to the amount determined under subparagraph (i); and
- (b) where the person was, immediately before that time, using capital property of the person in commercial activities of the person, the person shall be deemed to have, immediately before that time, ceased using the property in commercial activities.
- (4) Services and rental properties.—Where a person who engages in commercial activities ceases at any time to be a registrant,
 - (a) in determining the input tax credits of the person for the last reporting period of the person beginning before that time, there may be included the total of any tax that becomes payable by the person after that time, to the extent that the tax is payable in respect of services that were supplied to the person before that time for consumption, use or supply in the course of commercial activities of the person or is calculated on the value of consideration that is a rent, royalty or similar payment attributable to a period before that time in respect of property that is used in the course of commercial activities of the person; and
 - (b) in determining the net tax of the person for the last reporting period of the person beginning before that time, there shall be added to the total for A in the formula set out in subsection 225(1) any input tax credit claimed by the person before that time, to the extent that it relates to services to be supplied to the person after that time or to the value of consideration that is a rent, royalty or similar payment attributable to a period after that time.
- (5) **Exception.**—Subsections (1) to (4) do not apply where section 171.1 applies and subsection (3) does not apply to property held by a person immediately before the person ceases to be a registrant where subsection 178.3(1), 178.4(1) or 178.5(1) or (2) applied to that property at an earlier time. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 37.

Taxi Businesses

- **171.1** (1) **Small suppliers.**—Where at any time a person who is a small supplier is engaged in a taxi business and other commercial activities in Canada, other than the supply by way of sale of real property, and the registration of the person under this Part does not apply to those other activities,
 - (a) the person shall be deemed, for the purposes of this Part, not to be a registrant at that time except in respect of that business and anything done by the person in the course of that business or in connection with it; and
 - (b) for the purposes of section 169 and Subdivision d, those other activities shall be deemed not to be commercial activities of the person at that time.
- (2) **Becoming a registrant for other activities.**—Where at any time a person is engaged in a taxi business and other commercial activities in Canada, other than the supply by way of sale of real property, and the person's registration under this Part begins, at that time, to apply to those other activities, the following rules apply:

- (a) for the purpose of determining an input tax credit of the person, the person shall be deemed to have received, at that time, a supply by way of sale of each property of the person, other than capital property, that was held immediately before that time for consumption, use or supply in the course of those other activities and to have paid, at that time, tax in respect of the supply equal to the lesser of
 - (i) the tax that, before that time, became payable or was paid by the person in respect of the last acquisition or importation of the property by the person, and
 - (ii) tax calculated on the fair market value of the property at that time; and
- (b) for the purpose of determining the input tax credits of the person for the reporting period that includes that time, there may be included the total of any tax that became payable by the person before that time, to the extent that the tax is calculated on consideration, or a part thereof,
 - (i) that is reasonably attributable to a service that is to be rendered to the person after that time and that was acquired or imported by the person for consumption, use or supply in the course of those other activities, or
 - (ii) that is a rent, royalty or similar payment in respect of property and that is reasonably attributable to a period after that time during which the property is used in the course of those other activities.
- (3) Ceasing to be a registrant for other activities. —Where at any time a person is engaged in a taxi business and other commercial activities in Canada, other than the supply by way of sale of real property, and the person's registration under this Part ceases, at that time, to apply to those other activities, the following rules apply:
 - (a) for the purposes of this Part, the person shall be deemed
 - (i) to have made, immediately before that time, a supply of each property of the person, other than capital property, that was held immediately before that time for consumption, use or supply in the course of those other activities, and to have collected, immediately before that time, tax in respect of the supply calculated on the fair market value of the property at that time, and
 - (ii) to have received, at that time, a supply of the property by way of sale and to have paid, at that time, tax in respect of the supply equal to the amount determined under subparagraph (i);
 - (b) in determining the input tax credits of the person for the reporting period that includes that time, there may be included tax that becomes payable by the person after that time, to the extent that the tax is calculated on consideration, or a part thereof,
 - (i) that is reasonably attributable to services that were rendered to the person before that time and that were acquired or imported by the person for consumption, use or supply in the course of those other activities, or
 - (ii) that is a rent, royalty or similar payment in respect of property and that is reasonably attributable to a period before that time during which the property was used in the course of those other activities; and
 - (c) where, in determining an input tax credit claimed by the person in a return under section 238 for a reporting period of the person ending before that time, there was included an amount in respect of tax calculated on consideration, or a part thereof.
 - (i) that is reasonably attributable to services that are to be rendered to the person after that time, or

(ii) that is a rent, royalty or similar payment in respect of property and that is reasonably attributable to a period (in this paragraph referred to as the "lease period") after that time,

the amount shall be added in determining the net tax for the reporting period of the person that includes that time, to the extent to which the property is used by the person during the lease period, or the services were acquired or imported by the person for consumption, use or supply, in the course of those other activities. S.C. 1993, c. 27, s. 38.

Appropriation of Property

- 172. (1) Use by registrant.—For the purposes of this Part, where a registrant who is an individual and who has, in the course of commercial activities of the registrant, acquired, manufactured or produced any property (other than capital property of the registrant) or acquired or performed any service appropriates the property or service, at any time, for the personal use, consumption or enjoyment of the registrant or another individual related to the registrant, the registrant shall be deemed
 - (a) to have made a supply of the property or service for consideration paid at that time equal to the fair market value of the property or service at that time; and
 - (b) except where the supply is an exempt supply, to have collected, at that time, tax in respect of the supply, calculated on that consideration.
- (2) **Benefits to shareholders, etc.**—For the purposes of this Part, where at any time a registrant that is a corporation, partnership, trust, charity or non-profit organization appropriates any property (other than capital property of the registrant) that was acquired, manufactured or produced, or any service acquired or performed, in the course of commercial activities of the registrant, to or for the benefit of a shareholder, partner, beneficiary or member of the registrant or any individual related to such a shareholder, partner, beneficiary or member, in any manner whatever (otherwise than by way of a supply made for consideration equal to the fair market value of the property or service), the registrant shall be deemed
 - (a) to have made a supply of the property or service for consideration paid at that time equal to the fair market value of the property or service at that time; and
 - (b) except where the supply is an exempt supply, to have collected, at that time, tax in respect of the supply, calculated on that consideration.
- (3) **Application.**—This section does not apply to property or a service appropriated by a registrant to or for the benefit of a person where
 - (a) the registrant was, because of section 170, not entitled to claim an input tax credit in respect of the last acquisition or importation of the property or service by the registrant; or
 - (b) section 173 applies to the property or service so appropriated for the purpose of making it available to the person. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 39.

Taxable Benefits

173. (1) Employee and shareholder benefits.—Where

- (a) a registrant at any time supplies to a person property or a service,
- (b) the supply is not an exempt supply, and
- (c) an amount (in this subsection referred to as the "benefit amount") in respect of the property or service is required under paragraph 6(1)(a), (e), (k) or (l) or subsection 15(1)

of the *Income Tax Act* to be included in computing the person's income for a taxation year of the person,

the following rules apply:

(d) in the case of a supply of property otherwise than by way of sale, the use made by the registrant in so providing the property to the person shall be deemed, for the purposes of this Part, to be use in commercial activities of the registrant, and to the extent that the registrant acquired the property for the purpose of making that supply, the registrant shall be deemed, for the purposes of this Part, to have so acquired the property for use in commercial activities of the registrant, and

(e) in any case, except where

- (i) the registrant was, because of section 170, not entitled to claim an input tax credit in respect of the last acquisition or importation of the property or service by the registrant,
- (ii) an election under subsection (2) by the registrant in respect of the property is in effect at that time.
- (iii) the registrant is an individual or a partnership and the property is a passenger vehicle or aircraft of the registrant that is not used by the registrant exclusively in commercial activities of the registrant, or
- (iv) the registrant is not an individual, a partnership or a financial institution and the property is a passenger vehicle or aircraft of the registrant that is not used by the registrant primarily in commercial activities of the registrant,

for the purposes of determining the net tax of the registrant,

- (v) the registrant shall be deemed to have made that supply to the person for consideration equal to the total of the consideration, if any, for the supply otherwise determined and the amount (in this paragraph referred to as the "adjusted benefit") by which the benefit amount exceeds the amount, if any, included in the benefit amount that can reasonably be attributed to tax imposed under an Act of the legislature of a province that is a prescribed tax for the purposes of section 154,
- (vi) tax calculated on the adjusted benefit shall be deemed to have become collectible, and to have been collected, by the registrant
 - (A) in the case of a supply in respect of which an amount is required under paragraph 6(1)(a), (e), (k) or (l) of the *Income Tax Act* to be included in computing the person's income for a particular taxation year of the person, on the last day of February of the year immediately following the particular taxation year, and
 - (B) in the case of a supply in respect of which an amount is required under subsection 15(1) of that Act to be included in computing the person's income, on the last day of the registrant's taxation year in which the property or service is so supplied to the person, and
- (vii) where the benefit amount is an amount that is or would, if the person were an employee of the registrant, be required under paragraph 6(1)(k) or (1) of the *Income Tax Act* to be included in computing the person's income, the tax calculated on the adjusted benefit shall be deemed to be equal to the prescribed percentage of the adjusted benefit.

(2) Election in respect of passenger vehicle or aircraft.—Where

(a) in a reporting period of a registrant other than a financial institution, the registrant

acquires a passenger vehicle or aircraft by way of lease for use otherwise than primarily in commercial activities of the registrant or the registrant uses, otherwise than primarily in commercial activities of the registrant, a passenger vehicle or aircraft that was last acquired by the registrant by way of lease, or

(b) in a reporting period of a registrant that is a financial institution, the registrant acquires a passenger vehicle or aircraft by way of purchase or lease or uses a passenger vehicle or aircraft that was last so acquired by the registrant,

the registrant may make an election under this subsection in respect of the vehicle or aircraft to take effect on the first day of that reporting period of the registrant.

- (3) **Effect of election.**—For the purposes of this Part, where an election made by a registrant under subsection (2) in respect of property becomes effective on a day in a particular reporting period of the registrant,
 - (a) notwithstanding paragraph (1)(d), the registrant shall be deemed to have begun, on that day, to use the property exclusively in activities of the registrant that are not commercial activities and at all times thereafter until the registrant next disposes of or ceases to lease the property, the registrant shall be deemed to use the property exclusively in activities of the registrant that are not commercial activities;
 - (b) where the property was last supplied to the registrant by way of lease,
 - (i) there shall not be included, in determining an input tax credit claimed by the registrant in the return under section 238 for the particular or any subsequent reporting period, tax calculated on consideration, or a part thereof, for that supply that is reasonably attributable to a period after that day, and
 - (ii) where an amount in respect of any tax referred to in subparagraph (i) was included in determining an input tax credit claimed by the registrant in a return under section 238 for a reporting period ending before the particular reporting period, that amount shall be added in determining the net tax of the registrant for the particular reporting period; and
 - (c) where the property was last supplied to the registrant by way of sale, the registrant is a financial institution and the cost of the property to the registrant did not exceed \$50,000,
 - (i) there shall not be included, in determining an input tax credit claimed by the registrant in the return under section 238 for the particular or any subsequent reporting period, tax that is calculated on consideration, or a part thereof, for that supply or that is in respect of an improvement to the property acquired or imported by the registrant after the property was last so acquired, and
 - (ii) where an amount in respect of any tax referred to in subparagraph (i) was included in determining an input tax credit claimed by the registrant in a return under section 238 for a reporting period of the registrant ending before the particular reporting period, that amount shall be added in determining the net tax of the registrant for the particular reporting period.
- (4) **Form of election.**—An election made under subsection (2) shall be made in prescribed form containing prescribed information. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 40; S.C. 1994, c. 21, s. 126.

Allowances and Reimbursements

174. Travel and other allowances.—For the purposes of this Part, where

- (a) a person pays an allowance
 - (i) to an employee of the person,
 - (ii) where the person is a partnership, to a member of the partnership, or
- (iii) where the person is a charity, to a volunteer who gives services to the charity for
 - (iv) supplies all or substantially all of which are taxable supplies (other than zero-rated supplies) of property or services acquired in Canada by the employee, member or volunteer in relation to activities engaged in by the person, or
 - (v) the use in Canada, in relation to activities engaged in by the person, of a motor vehicle,
- (b) an amount in respect of the allowance is deductible in computing the income of the person for a taxation year of the person for the purposes of the *Income Tax Act*, or would have been so deductible if the person were a taxpayer under that Act and the activity were a business, and
- (c) in the case of an allowance to which subparagraph 6(1)(b)(v), (vi), (vii) or (vii.1) of that Act would apply
 - (i) if the allowance were a reasonable allowance for the purposes of that subparagraph, and
 - (ii) where the person is a partnership and the allowance is paid to a member of the partnership, if the member were an employee of the partnership, or, where the person is a charity and the allowance is paid to a volunteer, if the volunteer were an employee of the charity,

the person considered, at the time the allowance was paid, that the allowance would be a reasonable allowance for those purposes and it is reasonable for the person to have considered, at that time, that the allowance would be a reasonable allowance for those purposes,

the person shall be deemed to have received a taxable supply of the property or service, to have paid, at that time, tax in respect of the supply equal to the tax fraction of the allowance and to have so acquired the property or service for use in commercial activities of the person to the same extent as the property or service was acquired by the employee, member or volunteer for consumption or use in relation to commercial activities of the person. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 40; S.C. 1994, c. 9, s. 9.

- 175. Reimbursement of employees, partners or volunteers. —For the purposes of this Part, where an employee of an employer, a member of a partnership or a volunteer who gives services to a charity acquires or imports property or a service for consumption or use in relation to activities of the employer, partnership or charity (each of whom is referred to in this section as the "person") and in respect of which the employee, member or volunteer receives, at any time, a reimbursement from the person, the person shall be deemed
 - (a) to have received a taxable supply of the property or service;
 - (b) to have so acquired the property or service for use in commercial activities of the person to the same extent as the property or service was acquired or imported by the employee, member or volunteer for consumption or use in relation to commercial activities of the person; and
 - (c) to have paid, at that time, tax in respect of the supply equal to the amount, if any,

included in the amount reimbursed that is on account of tax paid or payable by the employee, member or volunteer in respect of the acquisition or importation of the property or service by the employee, member or volunteer. S.C. 1990, c. 45, s. 12; S.C. 1994, c. 9, s. 9.

Used or Specified Tangible Personal Property

176. (1) Acquisition of used goods.—Subject to this Division, where

- (a) used tangible personal property is supplied in Canada by way of sale after 1993 to a registrant, tax is not payable by the registrant in respect of the supply, and the property is acquired for the purpose of consumption, use or supply in the course of commercial activities of the registrant, or
- (b) used tangible personal property is supplied in Canada by way of sale before 1994 to a registrant, tax is not payable by the registrant in respect of the supply, and the property is acquired for the purpose of supply in the course of commercial activities of the registrant,

for the purposes of this Part, the registrant shall be deemed (except where the supply is a zerorated supply or where section 167 applies to the supply) to have paid, at the time any amount is paid as consideration for the supply, tax in respect of the supply equal to the tax fraction of that amount.

(2) Export.—Where

- (a) a registrant at any time before 1994 makes a zero-rated supply, or a supply outside Canada, by way of sale of used tangible personal property and the registrant or any person with whom the registrant was not dealing at arm's length is deemed under subsection (1) to have paid tax in respect of the property, or
- (b) a registrant at any time makes a zero-rated supply, or a supply outside Canada, by way of sale of used specified tangible personal property that the registrant acquired by way of purchase for consideration that exceeds the prescribed amount in respect of the property and the registrant paid tax or would, but for section 156 or 167, have been required to pay tax in respect of the acquisition of the property,

for the purposes of this Part, the following rules apply:

- (c) the supply shall be deemed to be a supply made in Canada, and
- (d) the registrant shall be deemed to have collected tax at that time in respect of the supply equal to
 - (i) in the case of used tangible personal property other than used specified tangible personal property, the lesser of
 - (A) the tax that would be payable in respect of the supply if the supply were a supply made in Canada, other than a zero-rated supply, and
 - (B) the tax, if any, that was paid, the tax, if any, that was deemed under subsection (1) to have been paid or the tax that would, but for section 156 or 167, have been required to be paid by the registrant in respect of the acquisition of the property, and
 - (ii) in the case of used specified tangible personal property, the least of
 - (A) the tax that would be payable in respect of the supply if the supply were a supply made in Canada, other than a zero-rated supply,
 - (B) the tax, if any, that was deemed under subsection (1) to have been paid by the registrant in respect of the acquisition of the property,

- (C) the prescribed percentage of the tax, if any, that was paid (other than tax deemed to have been paid under subsection (1)) or the tax that would, but for section 156 or 167, have been required to be paid by the registrant in respect of the acquisition of the property, and
- (D) where a taxable supply by way of sale of the property was made to the registrant by another person and that or any other person had at an earlier time been deemed under subsection (1) to have paid tax in respect of the acquisition of the property at that earlier time, the registrant submits with the return under this Part for the reporting period of the registrant that includes that time satisfactory evidence to establish the amount of that tax, and the property had, since that earlier time, been held in Canada solely for supply in the course of commercial activities, the amount of that tax,
- (3) **Returnable containers.**—Where a registrant is the recipient of a supply of a usual covering or container of a class of coverings or containers in which property (other than property the supply of which is a zero-rated supply) is delivered, except where the container is a returnable container (within the meaning assigned by section 226) of a class that is not supplied by the registrant when filled and sealed, subsection (1) does not apply unless the registrant pays to the supplier consideration for the supply not less than the total of
 - (a) the consideration that the registrant charges for supplies by the registrant of used coverings or containers of that class, and
 - (b) tax calculated on that consideration.
- (4) Consideration exceeding fair market value.—For the purposes of subsection (1), where a person makes a supply of used tangible personal property to a registrant with whom the person is not dealing at arm's length for consideration that exceeds the fair market value of the property at the time ownership of the property is transferred to the registrant, the value of the consideration for the supply shall be deemed to be equal to the fair market value of the property at that time.
- (4.1) Consideration less than fair market value.—For the purposes of subsection (2), where a registrant makes a taxable supply by way of sale of used tangible personal property to a recipient with whom the registrant is not dealing at arm's length for no consideration or for consideration that is less than the fair market value of the property at the time the ownership of the property is transferred to the recipient, except where section 155 applies to the supply, the recipient shall be deemed to have paid tax in respect of the supply calculated on that fair market value.
 - (5) **Restriction.**—Where at any time a registrant has
 - (a) acquired by way of purchase specified tangible personal property for consideration that exceeds the prescribed amount in respect of the property,
 - (b) imported specified tangible personal property and the value of the property as determined under Division III exceeds the prescribed amount in respect of the property, or
 - (c) acquired specified tangible personal property by way of lease, licence or similar arrangement and the value of the property exceeds the prescribed amount in respect of the property,

and the property was acquired otherwise than exclusively for the purpose of supply, the registrant shall be deemed to have acquired the property for use, and to use the property at all times, exclusively in activities other than commercial activities.

(6) Museums, galleries, etc.—Where

- (a) a registrant has
 - (i) acquired specified tangible personal property by way of purchase for consideration that exceeds the prescribed amount in respect of the property, or
 - (ii) imported specified tangible personal property and the value of the property as determined under Division III exceeds the prescribed amount in respect of the property,

for the purpose of exhibiting the property in a museum, gallery or similar establishment of the registrant, and the registrant makes or intends to make taxable supplies of admissions in respect of the establishment, and

(b) the registrant makes an election in respect of the property in prescribed form filed with the return required under Division V to be filed by the registrant for the reporting period in which the property was acquired or imported,

subsection (5) does not apply and the registrant shall be deemed, for the purposes of subsection (1), to have acquired or imported the property for the purpose of supply in the course of commercial activities.

(7) **Effect of election.**—Where an election under subsection (6) is made in respect of property, any supply by the registrant of the property shall be deemed to be a taxable supply. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 41.

Agents

- 177. (1) Supply on behalf of registrant.—For the purposes of this Part, where a registrant (in this subsection referred to as the "agent"), acting as agent of another registrant (in this subsection referred to as the "principal") in the course of a commercial activity of the agent, makes a taxable supply (otherwise than by auction) of property or a service on behalf of the principal to a recipient and the agent does not disclose to the recipient in writing the name of the principal and the registration number assigned to the principal under Subdivision d of Division V,
 - (a) the principal shall be deemed not to have made the supply to the recipient;
 - (b) the agent shall be deemed to have made the supply to the recipient and not to have made a supply to the principal of services relating to the supply to the recipient;
 - (c) the principal shall be deemed to have made a supply of the property or service to the agent and the agent shall be deemed to have received that supply from the principal; and
 - (d) where a particular amount of consideration for the supply of the property or service to the recipient becomes due or is paid and at one or more times the agent remits to, or credits in favour of, the principal an amount on account of the particular amount, the agent shall be deemed to have paid, and the principal shall be deemed to have received, at the earliest of those times, consideration for the supply deemed under paragraph (c) to have been made to the agent equal to the amount determined by the formula

A - B

where

A is the particular amount, and

B is the consideration that has become due or been paid for the supply that, but for this subsection, would be made by the agent to the principal of services relating to the supply to the recipient or, where the supply to the recipient was made by way of lease,

licence or similar arrangement, the portion of that consideration that is reasonably attributable to the period to which the particular amount relates and that has not been attributed to a preceding period.

(1.1) Supply for person not required to collect tax.—Where

- (a) a registrant (in this subsection referred to as the "agent"), acting as agent of a person (in this subsection referred to as the "principal") in the course of a commercial activity of the agent, makes a supply of personal property (otherwise than by auction) on behalf of the principal,
- (b) the principal is not required to collect tax in respect of the supply, and
- (c) the agent does not disclose in writing to the recipient of the supply that the agent is making the supply on behalf of another person who is not required to collect tax in respect of the supply,

the following rules apply for the purposes of this Part:

- (d) the principal shall be deemed not to have made the supply to the recipient,
- (e) the agent shall be deemed to have made the supply to the recipient and not to have made a supply to the principal of services relating to the supply to the recipient, and
- (f) where at one or more times the agent remits to, or credits in favour of, the principal an amount on account of the supply to the recipient, the principal shall be deemed to have made a supply of the property to the agent, and the agent shall be deemed to have received that supply from the principal, for consideration, paid at the earliest of those times, equal to the amount determined by the formula

$$A - B$$

where

- A is the total of the consideration for the supply of the property to the recipient and the tax payable in respect of that supply, and
- B is the total of the consideration for the supply that, but for this subsection, would be made by the agent to the principal of services relating to the supply to the recipient and the tax, calculated on that consideration, that would, but for this subsection, be payable by the principal.
- (1.2) **Supply by auctioneer.**—Where a registrant (in this subsection referred to as the "auctioneer"), acting as auctioneer and agent for another person (in this subsection referred to as the "principal") in the course of a commercial activity of the auctioneer, makes, on behalf of the principal,
 - (a) a supply by auction of personal property, or
 - (b) where the principal is a registrant, a taxable supply by auction of real property or of a service,

the following rules apply for the purposes of this Part:

- (c) the supply shall be deemed to have been made by the auctioneer and not by the principal, and
- (d) where at one or more times the auctioneer remits to, or credits in favour of, the principal an amount on account of the supply to the recipient, the principal shall be deemed to have made a supply of the property or service to the auctioneer, and the auctioneer shall be deemed to have received that supply from the principal, for consideration, paid at the earliest of those times, equal to

- (i) where tax is not payable in respect of the supply deemed to have been made by the principal, the total of the consideration for the supply to the recipient and the tax payable by the recipient in respect of that supply, and
- (ii) in any other case, the consideration for the supply to the recipient.
- (1.3) **Application of s. 176.**—Where a registrant makes a supply of personal property on behalf of a person in circumstances in which the registrant is deemed, under subsection (1.1) or (1.2), to have received a supply of the property from the person and to have paid consideration equal to a particular amount determined under paragraph (1.1)(f) or subparagraph (1.2)(d)(i),
 - (a) for the purposes of section 176, the property shall be deemed to be used tangible personal property; and
 - (b) that section does not apply to the supply deemed to have been received by the registrant unless the registrant remits to, or credits in favour of, the person an amount on account of the supply of the property made on the person's behalf equal to
 - (i) where subsection (1.1) applies, the particular amount, and
 - (ii) where subsection (1.2) applies, the amount, if any, by which the particular amount exceeds the total of the consideration for the supply made by the registrant to the person of services relating to the supply of the property made on the person's behalf and the tax payable by the person in respect of the supply of those services.
- (1.4) Manner of supplying property.—For the purposes of this section, where a registrant makes a supply of property or a service on behalf of a person by way of sale or in any other manner, any supply of the property or service that is, as a result, deemed under this section to have been made by the person to the registrant shall be deemed to have been made in the same manner.
- (2) **Supply for artists, etc.**—For the purposes of this Part other than sections 148 and 249, where a prescribed registrant, acting in the course of a commercial activity, makes a supply on behalf of another person of intangible personal property in respect of a product of an author, performing artist, painter, sculptor or other artist, the following rules apply:
 - (a) the other person shall be deemed not to have made the supply to the recipient;
 - (b) the registrant shall be deemed to have made the supply to the recipient; and
 - (c) the registrant shall be deemed not to have made a supply to the other person of a service in relation to the supply to the recipient. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 42.
- 178. Expenses incurred in supply of service.—For the purposes of this Part, where in making a supply of a service a person incurs an expense for which the person is reimbursed by the recipient of the supply, the reimbursement shall be deemed to be part of the consideration for the supply of the service, except to the extent that the expense was incurred by the person as an agent of the recipient. S.C. 1990, c. 45, s. 12.

Direct Sellers

- 178.1 Definitions.—In this section and sections 178.2 to 178.5.
- "direct seller".—"direct seller" means a person who sells exclusive products of the person to independent sales contractors of the person;
- "distributor".—"distributor" of a direct seller means a person who is an independent sales contractor of the direct seller and who, in the course of the contractor's business, sells

some or all of the exclusive products of the direct seller acquired by the contractor to other independent sales contractors of the direct seller;

- "exclusive product".—"exclusive product" of a direct seller means personal property that is acquired, manufactured or produced by the direct seller for sale, in the ordinary course of a business of the direct seller, to an independent sales contractor of the direct seller, with the expectation that the property would be ultimately sold, otherwise than as used property, by an independent sales contractor of the direct seller, in the ordinary course of a business of the contractor, for consideration to a person other than another independent sales contractor of the direct seller;
- "independent sales contractor".—"independent sales contractor" of a direct seller means a person (other than an agent or employee of the direct seller or of a distributor of the direct seller) who
 - (a) has a contractual right to purchase exclusive products of the direct seller from the direct seller or from a distributor of the direct seller,
 - (b) purchases exclusive products of the direct seller for the purpose of resale to other independent sales contractors of the direct seller or to purchasers, and
 - (c) does not solicit, negotiate or enter into contracts for the sale of exclusive products of the direct seller to purchasers primarily at a fixed place of business of the person other than a private residence;
- "purchaser".—"purchaser" of an exclusive product of a direct seller means a person who is the recipient of a supply of the product and who is not acquiring the product for the purpose of supplying it for consideration;
- "sales aid".—"sales aid" of a person who is a direct seller or an independent sales contractor of a direct seller means a customized business form or a sample, demonstration kit, promotional or instructional item, catalogue or other personal property that is acquired, manufactured or produced by the person for sale to assist in the promotion, sale or distribution of exclusive products of the direct seller, but does not include an exclusive product of the direct seller or property that is sold, or held for sale, by the person to an independent sales contractor of the direct seller who is acquiring the property for use as capital property;
- "suggested retail price".—"suggested retail price" at any time of an exclusive product of a direct seller means the lowest price published by the direct seller applicable to supplies of the product made at that time to purchasers, but does not include any amount on account of tax. S.C. 1993, c. 27, s. 43.
- **178.2** (1) **Application for alternate collection method.**—A direct seller who is a registrant may apply, in prescribed form containing prescribed information and filed in prescribed manner, to the Minister to have section 178.3 apply to the direct seller.
- (2) **Idem.**—Where a direct seller and a distributor of the direct seller are registrants, they may apply jointly, in prescribed form containing prescribed information and filed in prescribed manner, to the Minister to have section 178.4 apply to the distributor.
- (3) **Grant of approval.**—Where the Minister receives an application under subsection (1) from a direct seller, the Minister may approve in writing the application of section 178.3 to the direct seller, and the Minister shall, in writing, notify the direct seller of the approval and the day on which it becomes effective.
- (4) **Idem.**—Where the Minister receives a joint application under subsection (2) from a direct seller and a distributor of the direct seller, the Minister may approve in writing the

application of section 178.4 to the distributor, and the Minister shall, in writing, notify both the distributor and the direct seller of the approval and the day on which it becomes effective.

- (5) **Deemed approval.**—Where, at a time when an approval for the application of section 178.3 to a direct seller would not, but for this subsection, be in effect, an approval granted under subsection (4) in respect of a distributor of the direct seller becomes effective and no other approval under that subsection in respect of a distributor of the direct seller is in effect at that time, the direct seller shall be deemed, for the purposes of this section and sections 178.3 to 178.5, to have been granted an approval under subsection (3) that becomes effective immediately before that time.
- (6) **Revocation of approval.**—The Minister may, effective on any day, revoke an approval granted under subsection (3) in respect of a direct seller where an approval granted under subsection (4) in respect of a distributor of the direct seller is not in effect on that day and
 - (a) the direct seller fails to comply with any provision of this Part, or
 - (b) except in the case of an approval deemed under subsection (5) to have been granted, the direct seller requests, in writing, the Minister to revoke the approval,

and where the Minister revokes the approval, the Minister shall, in writing, notify the direct seller of the revocation and the day on which it becomes effective.

- (7) **Idem.**—The Minister may revoke an approval granted under subsection (4) in respect of a distributor of a direct seller where the distributor fails to comply with any provision of this Part or the distributor and the direct seller, in writing, jointly request the Minister to revoke the approval, and the Minister shall, in writing, notify both the distributor and the direct seller of the revocation and the day on which it becomes effective.
- (8) Cessation.—An approval granted under subsection (3) in respect of a direct seller ceases to have effect on the earliest of
 - (a) the day the direct seller ceases to be a registrant,
 - (b) the day an approval granted under subsection (4) in respect of any distributor of the direct seller ceases to have effect and there is no other approval granted under that subsection in respect of any distributor of the direct seller in effect, and
 - (c) the day a revocation of the approval under subsection (6) becomes effective.
- (9) **Idem.**—An approval granted under subsection (4) on the joint application of a direct seller and a distributor of the direct seller ceases to have effect on the earliest of
 - (a) the day the direct seller ceases to be a registrant,
 - (b) the day the distributor ceases to be a registrant, and
 - (c) the day a revocation of the approval under subsection (7) becomes effective. S.C. 1993, c. 27, s. 43.
- 178.3 (1) Effect of approval for direct seller.—For the purposes of this Part, where at any time when an approval of the Minister for the application of this section to a direct seller is in effect, the direct seller makes in Canada a taxable supply by way of sale (other than a zero-rated supply) of an exclusive product of the direct seller to an independent sales contractor of the direct seller who is not a distributor in respect of whom an approval granted under subsection 178.2(4) on application made jointly with the direct seller is in effect at that time or becomes effective immediately after that time, the following rules apply:
 - (a) the supply shall be deemed to have been made for consideration

- (i) that becomes due, and is paid, at the particular time that is the earliest time at which any consideration for the supply becomes due or is paid, and
- (ii) that is equal to the suggested retail price of the product at the time the supply is made;
- (b) tax is deemed not to be payable by the contractor in respect of the supply;
- (c) the contractor is not entitled to any rebate under section 261 in respect of the supply; and
- (d) in determining the net tax of the direct seller for the reporting period of the direct seller that includes the particular time, there shall be added an amount equal to tax calculated on the suggested retail price of the product at the time the supply is made.

(2) Idem.—Where

- (a) at any time when an approval of the Minister for the application of this section to a direct seller is in effect, a particular independent sales contractor of the direct seller makes in Canada a particular taxable supply by way of sale (other than a zero-rated supply) of an exclusive product of the direct seller,
- (b) the particular contractor is not a distributor in respect of whom an approval granted under subsection 178.2(4) on application made jointly with the direct seller is in effect at that time or becomes effective immediately after that time, and
- (c) subsection (1) applied to a supply of the product made at an earlier time or subsection 178.5(1) applied to the product at an earlier time,

the following rules apply:

- (d) if the recipient of the particular supply is another independent sales contractor of the direct seller, the particular supply shall be deemed, for the purposes of this Part except section 178.1 and this section, not to have been made by the particular contractor and not to have been received by the other contractor, and
- (e) if the recipient of the particular supply is any person (other than the direct seller and another independent sales contractor of the direct seller),
 - (i) the particular supply shall be deemed, for the purposes of this Part except section 178.1 and subsections 178.3(4) and 178.5(7), to be a taxable supply made by the direct seller, and not by the particular contractor, for consideration equal to the lesser of the actual consideration for the supply and the suggested retail price of the product at the time the particular supply is made,
 - (ii) any tax in respect of the particular supply that is collected by the particular contractor shall be deemed to have been collected on behalf of the direct seller, and
 - (iii) tax in respect of the particular supply shall not be included in determining the net tax of the direct seller for any reporting period.
- (3) **Adjustment to direct seller's net tax.**—For the purposes of this Part, where a direct seller has made a supply of an exclusive product of the direct seller in circumstances in which an amount was required under paragraph (1)(d) to be added in determining the net tax of the direct seller and an independent sales contractor of the direct seller subsequently supplies the product to the direct seller in a particular reporting period of the direct seller, the contractor shall be deemed not to have so supplied the product and the amount may be deducted in determining the net tax of the direct seller for the particular reporting period or any subsequent reporting period ending on or before the day that is four years after the day the particular reporting period ends. S.C. 1993, c. 27, s. 43.

- (4) Idem.—Where
- (a) at a particular time a direct seller makes a supply of an exclusive product of the direct seller in circumstances in which an amount is required under paragraph (1)(d) to be added in determining the net tax of the direct seller,
- (b) after March 1993 a particular independent sales contractor of the direct seller
 - (i) makes a supply of the product that is
 - (A) a zero-rated supply,
 - (B) a supply made outside Canada, or
 - (C) a supply in respect of which the recipient is not required to pay tax because of an Act of Parliament,
 - (ii) makes a supply of the product to a person other than an independent sales contractor of the direct seller for consideration
 - (A) that is less than the suggested retail price of the product at the particular time and more than nominal, and
 - (B) on which was calculated tax that was paid by the person, or
 - (iii) makes a supply of the product to a person other than an independent sales contractor of the direct seller for no consideration or for nominal consideration or appropriates the product for the consumption, use or enjoyment of the particular contractor, and
- (c) the direct seller pays to, or credits in favour of, the particular contractor an amount in respect of the product equal to
 - (i) where subparagraph (b)(i) applies, tax calculated on the suggested retail price of the product at the particular time, and
 - (ii) where subparagraph (b)(ii) or (iii) applies, the amount determined by the formula

A - B

where

A is the tax calculated on the suggested retail price of the product at the particular time, and

B is

- (A) where subparagraph (b)(ii) applies, tax calculated on the consideration for the supply of the product by the particular contractor, and
- (B) where subparagraph (b)(iii) applies, tax calculated on the consideration for the supply of the product to the particular contractor determined without reference to paragraph (1)(a),

the direct seller may deduct the amount determined under paragraph (c) in determining the net tax of the direct seller for the particular reporting period of the direct seller in which the payment or credit is given or any subsequent reporting period ending on or before the day that is four years after the day the particular reporting period ends. S.C. 1993, c. 27, s. 43.

178.4 (1) Effect of approval for distributor.—For the purposes of this Part, where at any time when an approval of the Minister for the application of this section to a distributor of a direct seller is in effect, the distributor makes in Canada a taxable supply by way of sale (other than a zero-rated supply) of an exclusive product of the direct seller to an independent sales contractor of the direct seller who is not a distributor in respect of whom an approval granted

under subsection 178.2(4) on application made jointly with the direct seller is in effect at that time or becomes effective immediately after that time, the following rules apply:

- (a) the supply shall be deemed to have been made for consideration
 - (i) that becomes due, and is paid, at the particular time that is the earliest time at which any consideration for the supply becomes due or is paid, and
 - (ii) that is equal to the suggested retail price of the product at the time the supply is made;
- (b) tax is deemed not to be payable by the contractor in respect of the supply;
- (c) the contractor is not entitled to any rebate under section 261 in respect of the supply; and
- (d) in determining the net tax of the distributor for the reporting period of the distributor that includes the particular time, there shall be added an amount equal to tax calculated on the suggested retail price of the product at the time the supply is made.

(2) Idem.—Where

- (a) at any time when an approval of the Minister for the application of this section to a distributor of a direct seller is in effect, a particular independent sales contractor of the direct seller (other than the distributor) makes in Canada a particular taxable supply by way of sale (other than a zero-rated supply) of an exclusive product of the direct seller, and
- (b) subsection (1) applied to a supply of the product made at an earlier time by an independent sales contractor of the direct seller or subsection 178.5(2) applied, at an earlier time, to the product,

the following rules apply:

- (c) if the recipient of the particular supply is a person who is an independent sales contractor of the direct seller (other than the distributor), the particular supply shall be deemed, for the purposes of this Part except section 178.1 and this section, not to have been made by the particular contractor and not to have been received by the person, and
- (d) if the recipient of the particular supply is a person (other than the distributor and another independent sales contractor of the direct seller),
 - (i) the particular supply shall be deemed, for the purposes of this Part except section 178.1 and subsections 178.4(4) and 178.5(7), to be a taxable supply made by the distributor, and not by the particular contractor, for consideration equal to the lesser of the actual consideration for the supply and the suggested retail price of the product at the time the particular supply is made,
 - (ii) any tax in respect of the particular supply that is collected by the particular contractor shall be deemed to have been collected on behalf of the distributor, and
 - (iii) tax in respect of the particular supply shall not be included in determining the net tax of the distributor for any reporting period.
- (3) Adjustment to distributor's net tax,—For the purposes of this Part, where a distributor of a direct seller has made a supply of an exclusive product of the direct seller in circumstances in which an amount was required under paragraph (1)(d) to be added in determining the net tax of the distributor and another independent sales contractor of the direct seller subsequently supplies the product to the distributor in a particular reporting period of the distributor, the other contractor shall be deemed not to have so supplied the product and the amount may be deducted in determining the net tax of the distributor for the particular

reporting period or any subsequent reporting period ending on or before the day that is four years after the day the particular reporting period ends.

- (4) Idem.—Where
- (a) at a particular time a distributor of a direct seller makes a supply of an exclusive product of the direct seller in circumstances in which an amount is required under paragraph (1)(d) to be added in determining the net tax of the distributor,
- (b) after March 1993 a particular independent sales contractor of the direct seller (other than the distributor)
 - (i) makes a supply of the product that is
 - (A) a zero-rated supply,
 - (B) a supply made outside Canada, or
 - (C) a supply in respect of which the recipient is not required to pay tax because of an Act of Parliament.
 - (ii) makes a supply of the product to a person other than an independent sales contractor of the direct seller for consideration
 - (A) that is less than the suggested retail price of the product at the particular time and more than nominal, and
 - (B) on which was calculated tax that was paid by the person, or
 - (iii) makes a supply of the product to a person other than an independent sales contractor of the direct seller for no consideration or for nominal consideration or appropriates the product for the consumption, use or enjoyment of the particular contractor, and
- (c) the distributor pays to, or credits in favour of, the particular contractor an amount in respect of the product equal to
 - $(i) \ where \ subparagraph \ (b) (i) \ applies, tax \ calculated \ on \ the \ suggested \ retail \ price \ of \ the \ product \ at \ the \ particular \ time, \ and$
 - (ii) where subparagraph (b)(ii) or (iii) applies, the amount determined by the formula

A - B

where

A is the tax calculated on the suggested retail price of the product at the particular time, and

B is

- (A) where subparagraph (b)(ii) applies, tax calculated on the consideration for the supply of the product by the particular contractor, and
- (B) where subparagraph (b)(iii) applies, tax calculated on the consideration for the supply of the product to the particular contractor determined without reference to paragraph (1)(a),

the distributor may deduct the amount determined under paragraph (c) in determining the net tax of the distributor for the particular reporting period of the distributor in which the payment or credit is given or any subsequent reporting period ending on or before the day that is four years after the day the particular reporting period ends. S.C. 1993, c. 27, s. 43.

178.5 (1) Products held at time of approval.—Where

- (a) an approval granted under subsection 178.2(3) in respect of a direct seller becomes effective at any time after January 1, 1991,
- (b) a registrant who is an independent sales contractor of the direct seller has, at that time, in inventory an exclusive product of the direct seller, and
- (c) the registrant is not a distributor in respect of whom an approval granted under subsection 178.2(4) on application made jointly with the direct seller is in effect at that time or becomes effective immediately after that time,

the registrant shall be deemed, for the purposes of this Part except sections 148 and 249,

- (d) to have made, immediately before that time, a supply of the product for consideration, that becomes due and is paid immediately before that time, equal to the suggested retail price of the product at that time, and
- (e) to have collected, immediately before that time, tax in respect of the supply calculated on that consideration.
- (2) **Products held at time of revocation.**—Where, at the time an approval granted under subsection 178.2(4) in respect of a distributor of a direct seller ceases to have effect, the distributor has in inventory an exclusive product of the direct seller and an approval granted under subsection 178.2(3) in respect of the direct seller does not cease to have effect at that time, the distributor shall be deemed, for the purposes of this Part except sections 148 and 249,
 - (a) to have made, immediately before that time, a supply of the product for consideration, that becomes due and is paid immediately before that time, equal to the suggested retail price of the product at that time; and
 - (b) to have collected, immediately before that time, tax in respect of the supply calculated on that consideration.
- (3) **Idem.**—For the purposes of this Part, where an approval granted under subsection 178.2(4) in respect of a distributor of a direct seller ceases to have effect at the same time as an approval granted under subsection 178.2(3) in respect of the direct seller ceases to have effect, each independent sales contractor of the direct seller, other than a distributor in respect of whom an approval granted under subsection 178.2(4) ceases to have effect at that time, shall be deemed
 - (a) to have received, immediately after that time, a supply of each exclusive product of the direct seller that the contractor has in inventory at that time for consideration, that becomes due and is paid immediately after that time, equal to the suggested retail price of the product at that time; and
 - (b) to have paid, immediately after that time, tax in respect of the supply calculated on that consideration.
- (4) **Idem.**—For the purposes of this Part, where an approval granted under subsection 178.2(3) in respect of a direct seller ceases, at any time after March 1993, to have effect and subsection (3) does not apply, each independent sales contractor of the direct seller shall be deemed
 - (a) to have received, immediately after that time, a supply of each exclusive product of the direct seller that the contractor has in inventory at that time for consideration, that becomes due and is paid immediately after that time, equal to the suggested retail price of the product at that time; and
 - (b) to have paid, immediately after that time, tax in respect of the supply calculated on that consideration.

- (5) Sales aids.—For the purposes of this Part, where at any time when an approval of the Minister for the application of section 178.3 to a direct seller is in effect, the direct seller or an independent sales contractor of the direct seller makes in Canada a taxable supply by way of sale of a sales aid of the direct seller or of the contractor, as the case may be, to an independent sales contractor of the direct seller, the supply shall be deemed not to be a supply.
- (6) **Bonus payments.**—For the purposes of this Part, where, at any time after March 1993 when an approval of the Minister for the application of section 178.3 to a direct seller is in effect, an amount is paid or payable by the direct seller or an independent sales contractor of the direct seller to an independent sales contractor of the direct seller because of the volume of purchases or sales of exclusive products of the direct seller or of sales aids and otherwise than as consideration for a supply of such a product or sales aid, the amount shall be deemed not to be consideration for a supply.
- (7) **Host gifts.**—For the purposes of this Part, where, at any time after March 1993 when an approval of the Minister for the application of section 178.3 to a direct seller is in effect, an independent sales contractor of the direct seller, who is not a distributor in respect of whom an approval granted under subsection 178.2(4) on application made jointly with the direct seller is in effect at that time or becomes effective immediately after that time, makes a supply of property to a person as consideration for the supply by the person of a service of acting as a host at an occasion that is organized for the purpose of the promotion or distribution by the contractor of exclusive products of the direct seller, the person shall be deemed not to have made a supply of the service and the service shall be deemed not to be consideration for a supply.

(8) Restriction on input tax credits.—Where

- (a) after March 1993 a registrant, who is a direct seller in respect of whom an approval granted under subsection 178.2(3) is in effect or who is a distributor of such a direct seller, acquires or imports property (other than an exclusive product of the direct seller) or a service for supply to an independent sales contractor of the direct seller, or an individual related thereto.
- (b) the property or service is so supplied by the registrant for no consideration or for consideration that is less than the fair market value of the property or service, and
- (c) the contractor or individual is not acquiring the property or service for consumption, use or supply exclusively in the course of commercial activities of the contractor or individual, as the case may be,

the following rules apply:

- (d) no tax is payable in respect of the supply, and
- (e) in determining an input tax credit of the registrant, no amount shall be included in respect of tax that becomes payable, or is paid without having become payable, by the registrant in respect of the property or service.
- (9) Appropriations for contractors.—For the purposes of this Part, where a registrant who is a direct seller in respect of whom an approval granted under subsection 178.2(3) is in effect or who is a distributor of such a direct seller appropriates, at any time after March 1993, property (other than an exclusive product of the direct seller) that was acquired, manufactured or produced, or any service acquired or performed, in the course of commercial activities of the registrant, to or for the benefit of an independent sales contractor of the direct seller, or any individual related thereto, who is not acquiring the property or service for consumption, use or supply exclusively in the course of commercial activities of the contractor or individual, in any

manner whatever (otherwise than by way of supply for consideration equal to the fair market value of the property or service), the registrant shall be deemed

- (a) to have made a supply of the property or service for consideration paid at that time equal to the fair market value of the property or service at that time; and
- (b) except where the supply is an exempt supply, to have collected, at that time, tax in respect of the supply calculated on that consideration.
- (10) **Exception.**—Subsection (9) does not apply to property or a service appropriated by a registrant where the registrant was not entitled to claim an input tax credit in respect of the property or service because of section 170.
- (11) Ceasing to be registrant.—Where, at any time after March 1993 when an approval granted under subsection 178.2(3) in respect of a direct seller is in effect, an independent sales contractor of the direct seller ceases to be a registrant, paragraph 171(3)(a) does not apply to sales aids of the contractor that were supplied to the contractor by the direct seller or another independent sales contractor of the direct seller at any time when the approval was in effect.
- (12) **Non-arm's length supply.** -Section 155 does not apply to a supply described in subparagraph 178.3(4)(b)(ii) or (iii) or 178.4(4)(b)(ii) or (iii) or subsection (7). S.C. 1993, c. 27, s. 43.

Buying Groups

178.6 (1) Definitions.—In this section,

- "original supplier". "original supplier" of tangible personal property or a service means a person who makes a taxable supply of the property or service to another person who, in turn, supplies the property or service by way of a pass-through supply;
- "pass-through supply".—"pass-through supply" means a taxable supply of tangible personal property or a service made by a person for consideration that is equal to the consideration paid or payable by the person to the supplier who supplied the property or service to the person;
- "ultimate recipient".—"ultimate recipient" means a recipient of a pass-through supply.
 - (2) Application for buyer designation.—Where
 - (a) all or substantially all of the supplies of property and services made by a particular person in the ordinary course of the particular person's business are pass-through supplies,
 - (b) in respect of each pass-through supply of tangible personal property or a service made by the particular person, the original supplier of the property or service causes physical possession of the property to be transferred to, or renders the service to, the ultimate recipient, or to another person on behalf of the ultimate recipient, and not to the particular person, and
 - (c) in respect of each pass-through supply of tangible personal property or a service made by the particular person, the ultimate recipient pays, on behalf of the particular person, to the original supplier of the property or service, the amount payable by the particular person to the original supplier as consideration for the property or service.

the particular person may apply to the Minister, in prescribed form containing prescribed information and filed in prescribed manner, to be designated as a buyer.

(3) Designation as buyer.—Where the Minister receives an application of a person

under subsection (2), the Minister may, subject to such conditions as the Minister may at any time impose, designate the person as a buyer and notify the person in writing of the designation and the day it becomes effective.

- (4) **Revocation of designation.**—The Minister may revoke a designation of a person made under subsection (3)
 - (a) on application of the person, or
 - (b) where the person fails to comply with any condition imposed in respect of the designation,

and, where the designation is revoked, the Minister shall notify the person in writing of the day the designation ceases to be effective.

- (5) **Buying group method.**—Where a person makes a pass-through supply of tangible personal property or a service at a time when a designation of the person as a buyer under subsection (3) is in effect, for the purposes of this Part (other than section 148, this section and Subdivision e of Division V), the following rules apply:
 - (a) the supply of the property or service by the original supplier of the property or service shall be deemed to have been made to the ultimate recipient and not to the person;
 - (b) the person shall be deemed not to have received a supply of the property or service from the original supplier nor to have supplied the property or service to the ultimate recipient;
 - (c) the consideration payable for, and the tax payable in respect of, the supply by the original supplier of the property or service shall be deemed to be payable by the ultimate recipient and any amount paid in respect of the consideration or tax shall be deemed to have been paid by the ultimate recipient;
 - (d) notwithstanding paragraph (c), the person and the ultimate recipient are jointly and severally liable for the payment of the tax in respect of the supply made by the original supplier; and
 - (e) if the amount charged or collected by the original supplier of the property or service as or on account of tax under Division II in respect of the supply exceeds the tax that was collectible under that Division in respect of the supply, or if the amount of tax collectible under that Division in respect of the supply is reduced because of a reduction in the consideration for the supply, and the original supplier issues to, or receives from, the person a credit note or a debit note in respect of the supply, the person shall be deemed to have received or issued the note on behalf of the ultimate recipient. S.C. 1993, c. 27, s. 43.

Non-resident

- $\textbf{179.} \ (1) \ \textbf{Delivery to consignee of a non-resident.} \\ -\text{For the purposes of this Part, where}$
- (a) a registrant, under an agreement between the registrant and a non-resident person who is not registered under Subdivision d of Division V,
 - (i) makes a taxable supply in Canada of tangible personal property by way of sale, or a taxable supply in Canada of a service of manufacturing or producing tangible personal property, to the non-resident person, or acquires physical possession of tangible personal property (other than property of a person who is resident in Canada) for the purpose of making a taxable supply of a commercial service in respect of the property to the non-resident person, and
 - (ii) at any time causes physical possession of the property to be transferred, at a place

- in Canada, to a third person (in this subsection referred to as the "consignee") or to the non-resident person, and
- (b) the non-resident person is not a consumer of the property or service supplied by the registrant under the agreement,

the following rules apply:

- (c) the registrant shall be deemed to have made to the non-resident person, and the non-resident person shall be deemed to have received from the registrant, a taxable supply of the property for consideration, that becomes due and is paid at that time, equal to
 - (i) where the registrant has caused physical possession of the property to be transferred to a consignee and no supply of the property is made to the consignee for consideration, nil,
 - (ii) where the registrant has caused physical possession of the property to be transferred to a consignee and a supply of the property is made to the consignee for consideration, the total of
 - (A) the fair market value of the property at that time, and
 - (B) where the registrant supplied a service in respect of the property to the nonresident person and the consideration for the supply is not included in the fair market value of the property determined under clause (A), the consideration for the supply of the service in respect of the property, and
 - (iii) where the registrant has caused physical possession of the property to be transferred to the non-resident person or a consignee, the total of
 - (A) the fair market value of the property at that time, and
 - (B) where the registrant supplied a service in respect of the property to the nonresident person and the consideration for the supply is not included in the fair market value of the property determined under clause (A), that consideration, and
- (d) where the registrant made a supply of a service referred to in subparagraph (a)(i) in respect of the property to the non-resident person, the registrant shall be deemed not to have made that supply of the service.
- (2) Exception where delivery to registrant consignee of a non-resident.—For the purposes of this Part, where
 - (a) a registrant, under an agreement between the registrant and a non-resident person who is not registered under Subdivision d of Division V,
 - (i) makes a taxable supply in Canada of tangible personal property by way of sale, or a taxable supply in Canada of a service of manufacturing or producing tangible personal property, to the non-resident person, or acquires physical possession of tangible personal property (other than property of a person who is resident in Canada) for the purpose of making a taxable supply of a commercial service in respect of the property to the non-resident person, and
 - (ii) causes physical possession of the property to be transferred, at a place in Canada, to a third person (in this subsection referred to as the "consignee") who is registered under Subdivision d of Division V,
 - (b) the non-resident person is not a consumer of the property or service supplied by the registrant under the agreement, and
 - (c) the consignee gives to the registrant, and the registrant retains, a certificate that

- (i) states the consignee's name and registration number assigned under subsection 241(1), and
- (ii) acknowledges that the consignee, on taking physical possession of the property, is assuming liability to pay or remit any amount that is or may become payable or remittable by the consignee under subsection (1) or Division IV in respect of the property,

subsection (1) does not apply to a supply referred to in subparagraph (a)(i) and, except in the case of a supply of a service of storing or shipping the property, any supply made by the registrant and referred to in that subparagraph shall be deemed to have been made outside Canada.

- (3) Exception where export.—For the purposes of this Part, where
- (a) a registrant, under an agreement between the registrant and a non-resident person who is not registered under Subdivision d of Division V,
 - (i) makes a taxable supply in Canada of tangible personal property by way of sale to the non-resident person,
 - (ii) makes a taxable supply in Canada of a service of manufacturing or producing tangible personal property to the non-resident person, or
 - (iii) acquires physical possession of tangible personal property (other than the property of a person who is resident in Canada) for the purpose of making a taxable supply of a commercial service in respect of the property to the non-resident person,
- (b) the non-resident person is not a consumer of the property or service supplied by the registrant under the agreement, and
- (c) either
 - (i) the registrant causes physical possession of the property to be transferred to a person at a place outside Canada or to a carrier, or the registrant mails the property, for export and delivery to a person at a place outside Canada, or
 - (ii) all of the following conditions are met:
 - (A) the registrant causes physical possession of the property to be transferred at a place in Canada to the non-resident person or any other person (each of whom is referred to in this subparagraph as the "exporter") for export,
 - (B) after physical possession of the property is transferred to the exporter, the exporter exports the property as soon as is reasonable having regard to the circumstances surrounding the exportation and, where applicable, the normal business practices of the exporter and the owner of the property,
 - (C) the property has not been acquired by the non-resident person or any owner of the property for consumption, use or supply in Canada at any time after physical possession of the property is transferred to the exporter and before the property is exported,
 - (D) after physical possession of the property is transferred to the exporter and before the property is exported, the property is not further processed, transformed or altered except to the extent reasonably necessary or incidental to its transportation, and
 - (E) the registrant maintains evidence satisfactory to the Minister of the exportation of the property or, where the exporter is authorized under subsection 221.1(2), the

exporter provides the registrant with a certificate in which the exporter certifies that the property will be exported in the circumstances described in clauses (B) to (D),

- subsection (1) does not apply to a supply referred to in paragraph (a) and, except in the case of a supply of a service of storing or shipping the property, any supply made by the registrant and referred to in that paragraph shall be deemed to have been made outside Canada.
- (4) **Retention of possession.**—For the purposes of this section, section 180 and paragraph (b) of the definition "imported taxable supply" in section 217, where
 - (a) a particular registrant at any time transfers ownership of tangible personal property to a non-resident person, who is not registered under Subdivision d of Division V, under an agreement for the supply of the property, and
 - (b) the particular registrant, or another registrant who has physical possession of the property at that time and who gives the particular registrant a certificate described in paragraph (2)(c), retains physical possession of the property after that time for the purpose of
 - (i) transferring physical possession of the property to the non-resident person, a person (in this paragraph referred to as a "subsequent purchaser") who subsequently acquires ownership of the property or a person designated by the non-resident person or a subsequent purchaser,
 - (ii) making a supply of a commercial service in respect of the property to the non-resident person or a subsequent purchaser, or
 - (iii) consumption, use or supply by that registrant under an agreement for a supply of the property made by way of sale or lease to that registrant by the non-resident person, by a subsequent purchaser or by a lessee or sub-lessee of the non-resident person or of the subsequent purchaser,

the following rules apply:

- (c) where the particular registrant so retains physical possession of the property after that time, the particular registrant shall be deemed to have transferred physical possession of the property at that time to another registrant and to have obtained a certificate of the other registrant described in paragraph (2)(c) and to have acquired physical possession of the property at that time for the purpose referred to in paragraph (b), and
- (d) where another registrant so retains physical possession of the property after that time, the particular registrant shall be deemed to have transferred physical possession of the property at that time to the other registrant and the other registrant shall be deemed to have acquired physical possession of the property at that time for the purpose referred to in paragraph (b).
- (5) **Transfer of possession to bailee.** —For the purposes of this section, section 180 and paragraph (b) of the definition "imported taxable supply" in section 217, where a registrant at any time transfers physical possession of tangible personal property to a bailee solely for the purpose of storing or shipping the property and either
 - (a) the bailee is a carrier to whom physical possession of the property has been transferred solely for the purpose of shipping the property, or
 - (b) the bailee has not, at or before that time, given the registrant a certificate described in paragraph (2)(c),

the following rules apply:

(c) where, under the agreement with the bailee for storing or shipping the property, the

bailee is required to transfer physical possession of the property to a person, other than the registrant, who is named at that time in the agreement,

- (i) the registrant shall be deemed to have transferred physical possession of the property to that person at that time and that person shall be deemed to have acquired physical possession of the property at that time, and
- (ii) the registrant shall be deemed not to have transferred physical possession of the property to the bailee and the bailee shall be deemed not to have acquired physical possession of the property, and
- (d) where, under the agreement with the bailee for storing or shipping the property, the bailee is required to transfer physical possession of the property to the registrant or to another person (in this paragraph referred to as the "consignee") who is to be identified at a later time,
 - (i) the registrant shall be deemed to retain physical possession of the property, and the bailee shall be deemed not to have acquired physical possession of the property, throughout the period beginning at that time and ending at the earliest of
 - (A) the time the consignee becomes identified,
 - (B) the time the bailee transfers physical possession of the property to the registrant, and
 - (C) where the bailee is not a carrier to whom physical possession of the property has been transferred for the sole purpose of shipping the property, the time the bailee gives the registrant a certificate of the bailee described in paragraph (2)(c),
 - (ii) where the bailee is not a carrier to whom physical possession of the property has been transferred for the sole purpose of shipping the property and the bailee, at a particular time before the time the consignee becomes identified, gives the registrant a certificate of the bailee described in paragraph (2)(c), the registrant shall be deemed to have transferred physical possession of the property to the bailee at the particular time and the bailee shall be deemed to have acquired physical possession of the property at the particular time for the purpose of making a supply of a commercial service in respect of the property to the owner of the property under an agreement with the owner, and
 - (iii) where the consignee becomes identified at a particular time before the bailee gives the registrant a certificate of the bailee described in paragraph (2)(c) in circumstances described in subparagraph (ii), the registrant shall be deemed to have transferred physical possession of the property to the consignee at the particular time and the consignee shall be deemed to have acquired physical possession of the property at the particular time,
- and, for the purposes of this paragraph, a consignee becomes identified at the earliest of
 - (iv) the time the registrant gives the consignee such documents in writing as are sufficient to enable the consignee to require the bailee to transfer physical possession of the property to the consignee,
 - (v) the time the registrant directs the bailee in writing to transfer physical possession of the property to the consignee, and
 - (vi) the time the bailee transfers physical possession of the property to the consignee.
- (6) Goods transferred to bailee by non-resident.—For the purposes of this section, section 180 and paragraph (b) of the definition "imported taxable supply" in section 217,

where a non-resident person who is not registered under Subdivision d of Division V transfers physical possession of tangible personal property to a bailee who is a registrant for the sole purpose of storing or shipping the property and the bailee

- (a) is a carrier who is acquiring physical possession of the property for the sole purpose of shipping the property, or
- (b) does not claim an input tax credit in respect of the acquisition or importation of the property,

the bailee shall be deemed not to have acquired physical possession of the property. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 44.

180. Receipt of property from non-resident.—For the purposes of determining an input tax credit of, or the amount of a rebate payable under section 259 or 260 to, a particular person, where a non-resident person who is not registered under Subdivision d of Division V

(a) either

- (i) makes a supply of tangible personal property to the particular person and delivers the property, or makes it available, in Canada to the particular person before the property is used in Canada by or on behalf of the non-resident person, or
- (ii) where the particular person is a registrant, causes physical possession of tangible personal property to be transferred in Canada to the particular person in circumstances in which the particular person is acquiring physical possession of the property for the purpose of making a taxable supply of a commercial service in respect of the property to the non-resident person,
- (b) has paid tax under Division III in respect of the importation of the property or has paid tax in respect of a supply of the property deemed under subsection 179(1) to have been made by a registrant, and
- (c) provides to the particular person evidence, satisfactory to the Minister, that the tax has been paid,

the particular person shall be deemed

- (d) to have paid, at the time the non-resident person paid that tax, tax in respect of a supply of the property to the particular person equal to that tax, and
- (e) in a case described in subparagraph (a)(ii), to have acquired the property for use exclusively in commercial activities of the particular person. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 45.

Coupons and Rebates

- 181. (1) Meaning of "coupon".—In this section, "coupon" includes a voucher, receipt, ticket or other device but does not include a gift certificate.
- (2) Acceptance of reimbursable coupon.—For the purposes of this Part, other than subsection 223(1), where at any time a registrant accepts, in full or partial consideration for a taxable supply of property or a service (other than a zero-rated supply), a coupon that entitles the recipient of the supply to a reduction of the price of the property or service equal to a fixed dollar amount specified in the coupon (in this subsection referred to as the "coupon value") and the registrant can reasonably expect to be paid an amount for the redemption of the coupon by another person, the following rules apply:

- (a) the tax collectible by the registrant in respect of the supply shall be deemed to be the tax that would be collectible if the coupon were not accepted;
- (b) the registrant shall be deemed to have collected, at that time, a portion of the tax collectible equal to the tax fraction of the coupon value; and
- (c) the tax payable by the recipient in respect of the supply shall be deemed to be the amount determined by the formula

A - B

where

A is the tax collectible by the registrant in respect of the supply, and

B is the tax fraction of the coupon value.

- (3) Acceptance of non-reimbursable coupon.—Where at any time a registrant accepts, in full or partial consideration for a taxable supply of property or a service (other than a zero-rated supply), a coupon that entitles the recipient of the supply to a reduction of the price of the property or service equal to a fixed dollar amount specified in the coupon (in this subsection referred to as the "coupon value") and the registrant can reasonably expect not to be paid an amount for the redemption of the coupon by another person, the registrant shall, for the purposes of this Part, treat the coupon
 - (a) as reducing the value of the consideration for the supply as provided for in subsection (4); or
 - (b) as a partial cash payment that does not reduce the value of the consideration, in which event subsection (2) applies and the registrant may claim an input tax credit for the reporting period of the registrant that includes that time equal to the tax fraction of the coupon value.
- (4) Acceptance of other coupons.—For the purposes of this Part, where a registrant accepts, in full or partial consideration for a supply of property or a service, a coupon that may be exchanged for the property or service or that entitles the recipient of the supply to a reduction of, or a discount on, the price of the property or service and subsection (2) does not apply in respect of the coupon, the value of the consideration for the supply shall be deemed to be the amount, if any, by which the value of the consideration for the supply as otherwise determined for the purposes of this Part exceeds the discount or exchange value of the coupon.
- (5) **Redemption of coupon.**—For the purposes of this Part, where, in full or partial consideration for a taxable supply of property or a service, a supplier who is a registrant accepts a coupon that may be exchanged for the property or service or that entitles the recipient of the supply to a reduction of, or a discount on, the price of the property or service and a particular person at any time pays, in the course of a commercial activity of the particular person, an amount to the supplier for the redemption of the coupon, the following rules apply:
 - (a) the amount shall be deemed not to be consideration for a supply;
 - (b) the payment and receipt of the amount shall be deemed not to be a financial service; and
 - (c) where the supply is not a zero-rated supply and the coupon entitled the recipient to a reduction of the price of the property or service equal to a fixed dollar amount specified in the coupon, the particular person, if a registrant (other than a registrant who is a prescribed registrant for the purposes of subsection 188(5)) at that time, may claim an input tax credit for the reporting period of the particular person that includes that time equal to the tax fraction of that amount, unless all or part of that amount is an amount of an adjustment,

refund or credit to which subsection 232(3) applies. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 46.

Where

181.1 Rebates.—Where

- (a) a registrant makes a taxable supply in Canada of property or a service (other than a zero-rated supply),
- (b) a particular person acquires the property or service, either from the registrant or from another person,
- (c) the registrant pays, at any time, a rebate in respect of the property or service to the particular person and therewith provides written indication that a portion of the rebate is an amount on account of tax, and
- (d) subsection 232(3) does not apply to the rebate,

the following rules apply:

- (e) the registrant may claim an input tax credit for the reporting period of the registrant that includes that time equal to the tax fraction of the amount of the rebate, and
- (f) where the particular person is a registrant who was entitled to claim an input tax credit, or a rebate under Division VI, in respect of the acquisition of the property or service, the particular person shall be deemed, for the purposes of this Part, to have made a taxable supply and to have collected, at that time, tax in respect of the supply equal to the amount determined by the formula

$$A \times \frac{B}{C} \times D$$

where

A is the tax fraction.

- B is the input tax credit or rebate under Division VI that the particular person was entitled to claim in respect of the acquisition of the property or service,
- C is the tax payable by the particular person in respect of the acquisition of the property or service, and
- D is the amount of the rebate paid to the particular person by the registrant. S.C. 1993, c. 27, s. 46.
- **181.2** Gift certificates.—For the purposes of this Part, the issuance or sale of a gift certificate for consideration shall be deemed not to be a supply and, when given as consideration for a supply of property or a service, the gift certificate shall be deemed to be money. S.C. 1993, c. 27, s. 46.

Forfeitures, Seizures and Repossessions

- **182.** (1) **Forfeiture.**—For the purposes of this Part, where at any time, as a consequence of the breach, modification or termination after 1990 of an agreement for the making of a taxable supply (other than a zero-rated supply) of property or a service in Canada by a registrant, an amount is paid or forfeited by a person to the registrant otherwise than as consideration for the supply,
 - (a) the registrant shall be deemed to have made to the person, and the person shall be deemed to have received from the registrant, a taxable supply of the property or service

for consideration equal to the consideration fraction of the amount paid or forfeited, as the case may be; and

- (b) except where the agreement was entered into in writing before 1991, the amount is paid or forfeited, as the case may be, after 1992 and tax in respect of the amount was not contemplated in the agreement, the registrant shall be deemed to have collected, and the person shall be deemed to have paid, at that time, tax in respect of the supply calculated on that consideration.
- (2) Extinguishing debt, etc.—For the purposes of this Part, where at any time, as a consequence of the breach, modification or termination after 1990 of an agreement for the making of a taxable supply (other than a zero-rated supply) of property or a service in Canada by or to a registrant, a debt or other obligation (other than consideration for the supply) of the registrant to a person is reduced or extinguished without payment on account of the debt or obligation,
 - (a) the registrant shall be deemed to have made to the person, and the person shall be deemed to have received from the registrant, a taxable supply of the property or service for consideration equal to the consideration fraction of the amount extinguished or by which the debt or obligation was reduced, as the case may be; and
 - (b) except where the agreement was entered into in writing before 1991, the debt or obligation is reduced or extinguished, as the case may be, after 1992 and tax in respect of the amount was not contemplated in the agreement, the registrant shall be deemed to have collected, and the person shall be deemed to have paid, at that time tax in respect of the supply calculated on that consideration.
- (3) **Exception.**—Subsection (1) does not apply to that part of any amount paid or forfeited in respect of the breach, modification or termination of an agreement for the making of a supply where that part is
 - (a) an additional amount that is charged to a person because the consideration for the supply is not paid within a reasonable period and is such an amount referred to in section 161;
 - (b) an amount paid by one railway corporation to another railway corporation as or on account of a penalty for failure to return rolling stock within a stipulated time; or
 - (c) an amount paid as or on account of demurrage.
- 183. (1) Seizure and repossession.—Where at any time after 1990 property of a person is, for the purpose of satisfying in whole or in part a debt or obligation owing by the person to another person (in this section referred to as the "creditor"), seized or repossessed by the creditor under a right or power exercisable by the creditor (other than a right or power that the creditor has under, or because of being a party to, a lease, licence or similar arrangement by which the person acquired the property),
 - (a) for the purposes of this Part, the person shall be deemed to have made, and the creditor shall be deemed to have received, at that time, a supply by way of sale of the property;
 - (b) for the purposes of this Part (other than sections 193 and 257), that supply shall be deemed to have been made for no consideration:
 - (c) where the supply referred to in paragraph (a) is a taxable supply of real property, for the purposes of sections 193 and 257, the tax payable in respect of the supply shall be deemed to be equal to tax calculated on the fair market value of the property at that time; and

- (d) where the supply referred to in paragraph (a) is a supply included in section 9 of Part I, or in section 25 of Part VI, of Schedule V, for the purposes of sections 193 and 257, the supply shall be deemed to be a taxable supply and the tax payable in respect of the supply shall be deemed to be equal to tax calculated on the fair market value of the property at that time.
- (2) **Supply in commercial activity.**—Subject to subsection (3), where at any time a creditor who has seized or repossessed property, in circumstances in which subsection (1) applies, makes a particular supply (other than an exempt supply) of the property, except where any of subsections (4) to (6) applied at an earlier time in respect of the use of the property by the creditor, the creditor shall be deemed, for the purposes of this Part, to have made the particular supply in the course of a commercial activity of the creditor and anything done by the creditor in the course of, or in connection with, the making of the supply and not in connection with the seizure or repossession shall be deemed to have been done in the course of the commercial activity.
- (3) **Court seizures.**—Where a court, for the purposes of satisfying an amount owing under a judgment of the court, orders a sheriff, bailiff or other officer of the court to seize property of the judgment debtor and subsequently makes a supply of the property, the supply of the property by the court shall be deemed, for the purposes of this Part, to be a supply made otherwise than in the course of a commercial activity.
- (4) Use of real property.—For the purposes of this Part, where a creditor who has seized or repossessed real property in circumstances in which subsection (1) applies or would, but for subsection (11), apply, begins at any time to use the property otherwise than in the making of a supply of the property, the creditor shall be deemed to have made a supply of the property at that time and, except where the supply is an exempt supply,
 - (a) to have collected, at that time, tax in respect of the supply equal to the tax fraction of the fair market value of the property at that time; and
 - (b) to have acquired the property and paid that tax at that time.
- (5) Use of personal property seized before 1994.—For the purposes of this Part, where a creditor who has seized or repossessed personal property from a person before 1994, in circumstances in which subsection (1) applies or would, but for subsection (11), apply. begins at a particular time to use the property otherwise than in the making of a supply of the property, the following rules apply:
 - (a) the creditor shall be deemed
 - (i) to have received, immediately after the particular time, a particular supply by way of sale of the property, and
 - (ii) where the property was, at the time it was seized or repossessed, specified tangible personal property having a fair market value in excess of the amount prescribed in respect of the property for the purposes of section 176, to have so acquired the property for use, and to use the property at all times after that acquisition until the creditor disposes of the property, exclusively in activities other than commercial activities; and
 - (b) where tax would have been payable had the property been purchased in Canada from the person at the time it was seized or repossessed, the creditor shall be deemed
 - (i) to have made, at the particular time, a taxable supply of the property and to have collected, at the particular time, tax in respect of that supply equal to the tax fraction of the fair market value of the property at the time it was seized or repossessed, and

- (ii) to have paid, immediately after the particular time, tax in respect of the particular supply equal to the amount determined under subparagraph (i).
- (6) Use of personal property seized after 1993.—For the purposes of this Part, where a creditor who has seized or repossessed personal property from a person after 1993, in circumstances in which subsection (1) applies or would, but for subsection (11), apply, begins at a particular time to use the property otherwise than in the making of a supply of the property,
 - (a) the creditor shall be deemed
 - (i) to have received, immediately after the particular time, a supply of the property and to have paid, immediately after the particular time, tax in respect of that supply equal to the tax fraction of the fair market value of the property at the time it was seized or repossessed, and
 - (ii) where the property was, at the time it was seized or repossessed, specified tangible personal property having a fair market value in excess of the amount prescribed in respect of the property for the purposes of section 176, to have so acquired the property for use, and to use the property at all times after that acquisition until the creditor disposes of the property, exclusively in activities other than commercial activities; and
 - (b) where tax would have been payable had the property been purchased in Canada from the person at the time it was seized or repossessed, the creditor shall be deemed to have made, at the particular time, a taxable supply of the property and to have collected, at the particular time, tax in respect of that supply equal to the tax fraction of the fair market value of the property at the time it was seized or repossessed.
- (7) Sale of personal property.—For the purposes of this Part, where a creditor who has seized or repossessed personal property from a person in circumstances in which subsection (1) applies makes at any time a particular taxable supply of the property by way of sale (other than a supply deemed, under any provision of this Part other than section 177, to have been made), the creditor was not deemed under subsection (5), (6) or (8) to have received a supply of the property at an earlier time and no tax would have been payable by the creditor had the creditor purchased the property from the person in Canada at the time it was seized or repossessed, except where
 - (a) the particular supply is made outside Canada or is a zero-rated supply, and
 - (b) the property was seized or repossessed by the creditor before 1994 or was, at the time of the seizure or repossession, used specified tangible personal property having a fair market value in excess of the amount prescribed in respect of the property for the purposes of section 176.

the creditor shall be deemed

- (c) to have received a supply of the property immediately before that time for consideration equal to the consideration for the particular supply, and
- (d) to have paid, immediately before that time, tax in respect of the supply deemed under paragraph (c) to have been received equal to the amount determined by the formula

A - B

where

A is tax calculated on that consideration, and

B is the total of all amounts each of which is an input tax credit or a rebate under this Part that the creditor was entitled to claim in respect of the property or an improvement thereto.

- (8) Lease of personal property.—For the purposes of this Part, where at any time a creditor who has seized or repossessed personal property from a person in circumstances in which subsection (1) applies makes a particular taxable supply of the property by way of lease, licence or similar arrangement, the creditor was not deemed under subsection (5) or (6) to have received a supply of the property at an earlier time and no tax would have been payable had the property been purchased in Canada from the person at the time it was seized or repossessed, except where
 - (a) the particular supply is made outside Canada or is a zero-rated supply, and
 - (b) the property was seized or repossessed by the creditor before 1994 or was, at the time it was seized or repossessed, used specified tangible personal property having a fair market value in excess of the amount prescribed in respect of the property for the purposes of section 176,

the creditor shall be deemed

- (c) to have received a supply of the property immediately before the particular time, and
- (d) to have paid, immediately before the particular time, tax in respect of that supply calculated on the fair market value of the property at the time it was seized or repossessed.
- (9) **Voluntary transfer.**—For the purposes of this section, where property is at any time voluntarily transferred by a particular person to another person for the purpose of satisfying in whole or in part a debt or obligation in respect of which the particular person is in default, the other person shall be deemed to have seized or repossessed the property from the particular person at that time in circumstances in which subsection (1) applies.
 - (10) **Debt security.**—For the purposes of this section, where
 - (a) for the purposes of satisfying in whole or in part a debt or obligation owing by a person, a creditor exercises a right under a debt security to cause the supply of property.
 - (b) subsection (3) does not apply to the supply, and
 - (c) a receiver (within the meaning assigned by subsection 266(1)) does not have authority in respect of the property,

the creditor shall be deemed to have seized the property immediately before that supply and that supply shall be deemed to have been made by the creditor and not by the person.

(11) Application of s. 266.—Where a creditor

- (a) exercises a right or power to seize or repossess property for the purpose of satisfying in whole or in part a debt or obligation owing by a person and is, in respect of the property, a receiver (within the meaning assigned by subsection 266(1)), or
- (b) appoints an agent to exercise a right or power to seize or repossess property for the purpose of satisfying in whole or in part a debt or obligation owing by a person and the agent is, in respect of the property, a receiver (within the meaning assigned by subsection 266(1)).

subsections (1), (2) and (7) to (9) do not apply and section 266 applies. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 47.

Property Acquired by Insurers on Settlement of Claim

184. (1) **Supply to insurer on settlement of claim.**—For the purposes of this Part, where at any time after 1990 property of a person is transferred to an insurer in the course of settling an insurance claim, the following rules apply:

- (a) for the purposes of this Part, the person shall be deemed to have made, and the insurer shall be deemed to have received, at that time, a supply by way of sale of the property;
- (b) for the purposes of this Part (other than sections 193 and 257), that supply shall be deemed to have been made for no consideration;
- (c) in the case of a taxable supply of real property, for the purposes of sections 193 and 257, the tax payable in respect of the supply shall be deemed to be equal to tax calculated on the fair market value of the property at that time; and
- (d) in the case of a supply included in section 9 of Part I, or in section 25 of Part VI, of Schedule V, for the purposes of sections 193 and 257, the supply shall be deemed to be a taxable supply and the tax payable in respect of the supply shall be deemed to be equal to tax calculated on the fair market value of the property at that time.
- (2) Supply in commercial activity.—Where at any time an insurer makes a particular supply (other than an exempt supply) of property transferred to the insurer in circumstances in which subsection (1) applies, except where any of subsections (3) to (5) applied at an earlier time in respect of the use of the property by the insurer, the insurer shall be deemed, for the purposes of this Part, to have made the particular supply in the course of a commercial activity of the insurer and anything done by the insurer in the course of, or in connection with, the making of the supply and not in connection with the transfer of the property shall be deemed to have been done in the course of the commercial activity.
- (3) Use of real property.—For the purposes of this Part, where at any time an insurer to whom real property has been transferred, in circumstances in which subsection (1) applies, begins to use the property otherwise than in the making of a supply of the property, the insurer shall be deemed to have made a supply of the property at that time and, except where the supply is an exempt supply,
 - (a) to have collected, at that time, tax in respect of the supply equal to the tax fraction of the fair market value of the property at that time; and
 - (b) to have acquired the property and paid that tax at that time.
- (4) Use of personal property transferred before 1994.—For the purposes of this Part, where an insurer to whom personal property has been transferred from a person before 1994, in circumstances in which subsection (1) applies, begins at a particular time to use the property otherwise than in the making of a supply of the property, the following rules apply:
 - (a) the insurer shall be deemed
 - (i) to have received, immediately after the particular time, a particular supply of the property, and
 - (ii) where the property was, at the time it was transferred, specified tangible personal property having a fair market value in excess of the amount prescribed in respect of the property for the purposes of section 176, to have so acquired the property for use, and to use the property at all times after that acquisition until the insurer disposes of the property, exclusively in activities other than commercial activities; and
 - (b) where tax would have been payable had the property been purchased in Canada from the person for consideration at the time it was transferred, the insurer shall be deemed
 - (i) to have made, at the particular time, a taxable supply of the property and to have collected, at the particular time, tax in respect of that supply equal to the tax fraction of the fair market value of the property at the time it was transferred, and

- (ii) to have paid, immediately after the particular time, tax in respect of the particular supply equal to the amount determined under subparagraph (i).
- (5) Use of personal property transferred after 1993.—For the purposes of this Part, where an insurer to whom personal property has been transferred from a person after 1993, in circumstances in which subsection (1) applies, begins at a particular time to use the property otherwise than in the making of a supply of the property.
 - (a) the insurer shall be deemed
 - (i) to have received, immediately after the particular time, a supply of the property and to have paid, immediately after the particular time, tax in respect of that supply equal to the tax fraction of the fair market value of the property at the time it was transferred, and
 - (ii) where the property was, at the time it was transferred, specified tangible personal property having a fair market value in excess of the amount prescribed in respect of the property for the purposes of section 176, to have so acquired the property for use, and to use the property at all times after that acquisition until the insurer disposes of the property, exclusively in activities other than commercial activities; and
 - (b) where tax would have been payable had the property been purchased in Canada from the person at the time it was transferred, the insurer shall be deemed to have made, at the particular time, a taxable supply of the property and to have collected, at the particular time, tax in respect of that supply equal to the tax fraction of the fair market value of the property at the time it was transferred.
- (6) Sale of personal property.—For the purposes of this Part, where an insurer to whom personal property has been transferred from a person in circumstances in which subsection (1) applies makes at any time a particular taxable supply of the property by way of sale (other than a supply deemed, under any provision of this Part other than section 177, to have been made), the insurer was not deemed under subsection (4), (5) or (7) to have received a supply of the property at an earlier time and no tax would have been payable by the insurer had the insurer purchased the property from the person in Canada at the time it was transferred, except where
 - (a) the particular supply is made outside Canada or is a zero-rated supply, and
 - (b) the property was transferred to the insurer before 1994 or was, at the time of the transfer, used specified tangible personal property having a fair market value in excess of the amount prescribed in respect of the property for the purposes of section 176,

the insurer shall be deemed

- (c) to have received a supply of the property immediately before that time for consideration equal to the consideration for the particular supply, and
- (d) to have paid, immediately before that time, tax in respect of the supply deemed under paragraph (c) to have been received equal to the amount determined by the formula

A - B

where

- A is tax calculated on that consideration, and
- B is the total of all amounts each of which is an input tax credit or a rebate under this Part that the insurer was entitled to claim in respect of the property or an improvement thereto.
- (7) Lease of personal property.—For the purposes of this Part, where at any time an

insurer to whom personal property has been transferred from a person in circumstances in which subsection (1) applies makes a particular taxable supply of the property by way of lease, licence or similar arrangement, the insurer was not deemed under subsection (4) or (5) to have received a supply of the property at an earlier time and no tax would have been payable had the property been purchased in Canada from the person at the time the property was transferred, except where

- (a) the particular supply is made outside Canada or is a zero-rated supply, and
- (b) the property was transferred to the insurer before 1994 or was, at the time it was transferred, used specified tangible personal property having a fair market value in excess of the amount prescribed in respect of the property for the purposes of section 176,

the insurer shall be deemed

- (c) to have received a supply of the property immediately before the particular time, and
- (d) to have paid, immediately before the particular time, tax in respect of that supply calculated on the fair market value of the property at the time it was transferred. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 48.

Property and Services for Financial Services

- 185. (1) Non-financial institutions.—Where the tax in respect of property or a service acquired or imported by a registrant who is engaged in commercial activities became payable by the registrant at a time when the registrant was not a financial institution, for the purposes of determining an input tax credit of the registrant in respect of the property or service and for the purposes of Subdivision d, to the extent (determined in accordance with subsection 141.01(2)) that the property or service was acquired or imported for consumption, use or supply in the course of making supplies of financial services (other than financial services that are not related to commercial activities of the registrant), the property or service shall, notwithstanding that subsection, be deemed to have been acquired or imported for consumption, use or supply in the course of those commercial activities.
- (2) Financial service relating to commercial activity.—For the purposes of subsection (1), financial services shall be deemed not to be related to commercial activities of an individual, except to the extent that the revenues and expenses relating to the services are taken into account in determining the individual's income from a business for the purposes of the *Income Tax Act*. S.C. 1990, c. 45, s. 12; S.C. 1994, c. 9, s. 11.

186. (1) Related corporations.—Where

- (a) a registrant (in this subsection referred to as the "parent") that is a corporation resident in Canada acquires or imports at any time particular property or a service that can reasonably be regarded as having been acquired or imported at that time by the parent for consumption or use in relation to shares of the capital stock, or indebtedness, of another corporation that is at that time related to the parent, and
- (b) at the time that tax in respect of the acquisition or importation becomes payable, or is paid without having become payable, by the parent, all or substantially all of the property of the other corporation is property that was last acquired or imported by the other corporation for consumption, use or supply by the other corporation exclusively in the course of its commercial activities,

except where subsection (2) applies, for the purposes of determining an input tax credit of the parent, the parent shall be deemed to have acquired or imported the particular property or service for use in the course of commercial activities of the parent to the extent that the parent

can reasonably be regarded as having acquired or imported the particular property or service for consumption or use in relation to the shares or indebtedness.

- (2) Takeover fees.—For the purposes of this Part, where
- (a) a registrant that is a corporation resident in Canada (in this subsection referred to as the "purchaser") is the recipient of the supply of property or a service relating to the acquisition or proposed acquisition by it of all or substantially all of the issued and outstanding shares of the capital stock of another corporation having full voting rights under all circumstances, and
- (b) throughout the period beginning when the purchaser acquired the property or the performance of the service began and ending at the later of the times referred to in paragraph (c), all or substantially all of the property of the other corporation was property that was acquired or imported for consumption, use or supply exclusively in the course of commercial activities.

the property or service shall be deemed to have been supplied for use exclusively in the course of commercial activities of the purchaser and, for the purpose of claiming an input tax credit, any tax in respect of the supply of the property or service to the purchaser shall be deemed to have become payable and been paid by the purchaser on the later of

- (c) the later of the day the purchaser acquired all or substantially all of the shares and the day the intention to acquire the shares was abandoned, and
- (d) the day the tax became payable or was paid by the purchaser.
- (3) **Shares, etc., held by corporation.**—Where at any time all or substantially all of the property of a particular corporation is property that was acquired or imported by it for consumption, use or supply exclusively in the course of its commercial activities, all shares of the capital stock of the particular corporation owned by, and all indebtedness of the particular corporation owed to, any other corporation that is related to the particular corporation shall, for the purposes of this section, be deemed to be, at that time, property that was acquired by the other corporation for use exclusively in the course of its commercial activities. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 49.

Bets and Games of Chance

187. Bets and games of chance.—For the purposes of this Part, where a particular person bets an amount on a game of chance, a race or other event or occurrence, the person with whom the bet is placed shall be deemed to have made a supply of a service to the particular person for consideration equal to the amount determined by the formula

$$A \times (B - C)$$

where

A is the consideration fraction;

- B is the total amount in respect of the bet that is given by the particular person to the person with whom the bet is placed, including any amount given as or on account of tax imposed on the particular person under an Act of the legislature of a province or under this Part and
- C is the amount of any tax imposed under an Act of the legislature of a province on the particular person in respect of the amount that is bet. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 50.

Prizes

- 188. (1) Prizes.—Where a commercial activity of a registrant (other than a registrant to whom subsection (5) applies) consists of taking bets or conducting games of chance and, in the course of that activity, the registrant pays an amount of money in a reporting period as a prize or winnings to a bettor or a person playing or participating in the games, for the purpose of determining an input tax credit of the registrant, the registrant shall be deemed to have received in the reporting period a taxable supply of a service for use exclusively in the activity and to have paid, in that period, tax in respect of the supply equal to the tax fraction of the amount of money paid as the prize or winnings.
- (2) **Prizes in competitive events.**—Where, in the course of an activity that involves the organization, promotion, hosting or other staging of a competitive event, a person gives a prize to a competitor in the event,
 - (a) the giving of the prize shall be deemed, for the purposes of this Part, not to be a supply;
 - (b) the prize shall be deemed, for the purposes of this Part, not to be consideration for a supply by the competitor to the person; and
 - (c) tax payable by the person in respect of any property given as the prize shall not be included in determining any input tax credit of the person for any reporting period.
- (3) Contributions by competitors.—For the purposes of this Part, where a competitor in a competitive event contributes an amount to the prizes to be given to competitors in the event, the contribution shall be deemed not to be consideration for a supply.
- (4) **Application of subsection (3).**—Subsection (3) does not apply in respect of a contribution that is made as part of a fee or charge paid by a competitor in a competitive event for the right or privilege of participating in the event and that is not separately identified as a contribution to the prizes.
- (5) Net tax of prescribed registrant [lottery corporation].—Where a registrant is a prescribed registrant at any time in a reporting period, the registrant's net tax for the period shall be determined in a prescribed manner. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 51; S.C. 1994, c. 9, s. 12.
 - **188.1** (1) [Lottery ticket distributors] Definitions.—In this section,
- "distributor".—"distributor" of an issuer means a person who
 - (a) as agent of the issuer, supplies rights of the issuer on behalf of the issuer, or
 - (b) on the person's own behalf supplies rights of the issuer;
- "issuer".—"issuer" means a registrant who is a prescribed registrant for the purposes of subsection 188(5);
- "right".—"right" of an issuer means a right to play or participate in a game of chance conducted by the issuer.
- (2) **Supply by issuer.**—For the purposes of this Part, where an issuer makes a supply of a right of the issuer to a distributor of the issuer,
 - (a) tax shall be deemed not to be payable by the distributor in respect of the supply; and
 - (b) the distributor is not entitled to any rebate under section 261 in respect of the supply.
- (3) **Supply by distributor.**—Where a particular distributor of an issuer makes a supply of a right of the issuer,
 - (a) if the recipient of the supply is another distributor of the issuer, the supply shall be

deemed, for the purposes of this Part except this section, not to have been made by the particular distributor and not to have been received by the other distributor;

- (b) if the recipient of the supply is the issuer, the supply shall be deemed, for the purposes of this Part except this section, not to have been made by the particular distributor; and
- (c) if the recipient of the supply is any other person,
 - (i) the supply shall be deemed, for the purposes of this Part, to be a supply made by the issuer and not by the particular distributor, and
 - (ii) any tax in respect of the supply that is collected by the particular distributor shall be deemed, for the purposes of this Part, to have been collected by the issuer, and not by the particular distributor.
- (4) Deemed non-supplies.—For the purposes of this Part,
- (a) supplies made to an issuer by a distributor of the issuer of a service in respect of
 - (i) the supply of rights of the issuer,
 - (ii) the awarding, payment or delivery of prizes won in games of chance conducted by the issuer, or
 - (iii) the maintenance or repair of equipment used by the distributor in the supplying of rights of the issuer, and
- (b) supplies made by an issuer to a distributor of the issuer of a service in respect of
 - (i) the supply of rights of the issuer, or
 - (ii) the awarding, payment or delivery of prizes won in games of chance conducted by the issuer,

shall be deemed not to be supplies.

- (5) **Deemed non-consideration.**—For the purposes of this Act,
- (a) promotional bonuses and prizes given by an issuer to a distributor of the issuer for or in respect of the supply by the distributor of rights of the issuer, and
- (b) amounts paid to an issuer by a distributor of the issuer for or on account of damages to property of the issuer,

shall be deemed not to be consideration for a supply. S.C. 1993, c. 27, s. 52.

Dues

- **189.** Dues in respect of employment. For the purposes of this Part, where an amount is paid by a person to an organization as
 - (a) a membership due paid to a trade union as defined
 - (i) in section 3 of the Canada Labour Code, or
 - (ii) in any Act of the legislature of a province providing for the investigation, conciliation or settlement of industrial disputes,

or to an association of public servants the primary object of which is to promote the improvement of the members' conditions of employment or work,

(b) a due that was, pursuant to the provisions of a collective agreement, retained by the person from an individual's remuneration and paid to a trade union or association referred to in paragraph (a) of which the individual was not a member, or

(c) a due to a parity or advisory committee or similar body, the payment of which was required under the laws of a province in respect of an individual's employment,

the organization shall be deemed to have made an exempt supply to the person and the amount shall be deemed to be consideration for the supply. S.C. 1990, c. 45, s. 12.

Fees

189.1 Government fees.—For the purposes of this Part, where a person who is the holder of, or an applicant for, a right the supply of which is an exempt supply described by paragraph 20(c) of Part VI of Schedule V is required to pay to a government or municipality or a board, commission or other body established by a government or municipality an amount that is levied for the purposes of recovering the costs of administration of a regulatory program relating to the right and a failure to pay the amount would result in a denial or loss of, a restriction in the exercise of, or a change in the person's entitlements under, the right, the government, municipality or body, as the case may be, shall be deemed to have made an exempt supply to the person and the amount shall be deemed to be consideration for that supply, S.C. 1993, c. 27, s. 53.

Foreign Conventions

- **189.2 Foreign conventions.**—Where a sponsor of a foreign convention
- (a) makes a supply of an admission to the convention,
- (b) makes a supply by way of lease, licence or similar arrangement of real property for use by the recipient of the supply exclusively as the site for the promotion, at the convention, of property or services supplied by, or a business of, the recipient, or
- (c) makes a supply of related convention supplies to a recipient of a supply referred to in paragraph (b),

the supply shall be deemed to have been made otherwise than in the course of a commercial activity of the sponsor. S.C. 1993, c. 27, s. 53.

Real Property

- **190.** (1) Conversion to residential use.—Where at any time a person begins to hold or use real property as a residential complex and
 - (a) the property was
 - (i) last acquired by the person to hold or use as a residential complex, or
 - (ii) immediately before that time, held for supply, or used or held for use as capital property, in a business or commercial activity of the person,
 - (b) immediately before that time, the property was not a residential complex, and
 - (c) the person did not engage in the construction or substantial renovation of, and is not, but for this section, a builder of, the complex,

for the purposes of this Part,

- (d) the person shall be deemed to have substantially renovated the complex,
- (e) the renovation shall be deemed to have begun at that time and to have been substantially completed at the earlier of the time the complex is occupied by any individual as a place of residence or lodging and the time the person transfers ownership of the complex to another person, and

(f) except where the person is

- (i) a particular individual who acquires the property at that time to hold or use exclusively as a place of residence of the particular individual or another individual who is related to the particular individual or who is a former spouse of the particular individual, or
- (ii) a trust, all the beneficiaries (other than contingent beneficiaries) of which are individuals and all the contingent beneficiaries of which, if any, are individuals or charities, that acquires the property at that time to hold or use exclusively as a place of residence of an individual who is a beneficiary of the trust,

the person shall be deemed to be a builder of the complex.

- (2) **Idem.**—Where at any time an individual appropriates real property for the personal use or enjoyment of the individual, another individual related to the individual or a former spouse of the individual and, immediately before that time, the property
 - (a) was held for supply, or was used or held for use as capital property, in a business or commercial activity of the individual, and
 - (b) was not a residential complex,

the individual shall, for the purposes of this Part, be deemed

- (c) to have made and received a taxable supply by way of sale of the property immediately before that time, and
- (d) to have paid as a recipient and to have collected as a supplier, at that time, tax in respect of the supply, calculated on the fair market value of the property at that time.

(3) Lease of land for residential use.—Where

- (a) a person who has an interest in land makes a supply of the land by way of lease, licence or similar arrangement and the supply is an exempt supply described by section 6.1 or paragraph 7(a) of Part I of Schedule V,
- (b) the person at any time gives possession of the land to the recipient of the supply under the arrangement,
- (c) the last use of the land by the person before that time was not under an arrangement for a supply referred to in paragraph (a),
- (d) the person was not deemed under subsection 200(2), 206(4) or 207(1) to have made a supply of the land at or immediately before that time, and
- (e) the recipient of the supply is not acquiring possession of the land for the purpose of
 - (i) constructing a residential complex thereon in the course of a commercial activity, or
 - (ii) making an exempt supply of the land described by section 6.1 of Part I of Schedule V.

the person shall, for the purposes of this Part, be deemed

- (f) to have made, immediately before that time, a taxable supply by way of sale of the land and to have collected, at that time, tax in respect of the supply calculated on the fair market value of the land at that time, and
- (g) to have received, at that time, a taxable supply by way of sale of the land and to have paid, at that time, tax in respect of that supply calculated on the fair market value of the land at that time.
- (4) First use of residential trailer park.—Where

- (a) a person makes a supply of a site in a residential trailer park of the person by way of lease, licence or similar arrangement and the supply is an exempt supply described by paragraph 7(b) of Part I of Schedule V,
- (b) the person at any time gives possession or occupancy of the site to the recipient of the supply under the arrangement,
- (c) none of the sites in the park were occupied immediately before that time under an arrangement for a supply referred to in paragraph (a), and

(d) either

- (i) the last acquisition of the park by the person was not under an exempt supply described by section 5.3 of Part I of Schedule V and the person was not deemed
 - (A) under this subsection to have made before that time, or
 - (B) under subsection 200(2), 206(4) or 207(1) to have made at or immediately before that time,

a supply of land included in the park as a consequence of using the land for purposes of the park, or

(ii) the person was entitled, after the park or land was last acquired or deemed to have been supplied by the person, to claim an input tax credit in respect of the acquisition thereof or an improvement thereto,

the person shall, for the purposes of this Part, be deemed

- (e) to have made, immediately before that time, a taxable supply by way of sale of the park and to have collected, at that time, tax in respect of the supply calculated on the fair market value of the park at that time, and
- (f) to have received, at that time, a taxable supply by way of sale of the park and to have paid, at that time, tax in respect of the supply calculated on the fair market value of the park at that time.
- (5) First use of additional area.—Where
- (a) a person increases the area of land included in a residential trailer park of the person,
- (b) the person makes a supply of a site in the area of land by which the park was increased (in this subsection referred to as the "additional area") by way of lease, licence or similar arrangement and the supply is an exempt supply described by paragraph 7(b) of Part I of Schedule V,
- (c) the person at any time gives possession or occupancy of the site to the recipient of the supply under the arrangement,
- (d) none of the sites in the additional area were occupied immediately before that time under an arrangement for a supply referred to in paragraph (b), and

(e) either

- (i) the last acquisition of the additional area by the person was not under an exempt supply described by section 5.3 of Part I of Schedule V and the person was not deemed
 - (A) under this section to have made before that time, or
- (B) under subsection 200(2), 206(4) or 207(1) to have made at or before that time a supply of the additional area as a consequence of using the additional area for purposes of the park, or
- (ii) the person was entitled, after the additional area was last acquired or deemed to

have been supplied by the person, to claim an input tax credit in respect of the acquisition thereof or an improvement thereto,

the person shall, for the purposes of this Part, be deemed

- (f) to have made, immediately before that time, a taxable supply by way of sale of the additional area and to have collected, at that time, tax in respect of the supply calculated on the fair market value of the additional area at that time, and
- (g) to have received, at that time, a taxable supply by way of sale of the additional area and to have paid, at that time, tax in respect of the supply calculated on the fair market value of the additional area at that time. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, ss. 54, 204.
- 190.1 (1) Construction of mobile or floating home.—For the purposes of this Part, any person who makes a supply of a mobile home or a floating home before it has been used or occupied by any individual as a place of residence or lodging shall be deemed to have engaged in the construction of the home and to have substantially completed the construction at the earlier of the time ownership of the home is transferred to the recipient of the supply and the time possession of the home is transferred to the recipient under the agreement for the supply.
- (2) **Substantial renovation of mobile or floating home.**—For the purposes of this Part, where a person engages in the substantial renovation of a mobile home or a floating home, the home shall be deemed not to have been used or occupied, at any time before the person began to substantially renovate the home, by any individual as a place of residence or lodging. S.C. 1993, c. 27, s. 55.
- 191. (1) Self-supply of single unit residential complex or residential condominium unit.—For the purposes of this Part, where
 - (a) the construction or substantial renovation of a residential complex that is a single unit residential complex or a residential condominium unit is substantially completed,
 - (b) the builder of the complex
 - (i) gives possession of the complex to a particular person under a lease, licence or similar arrangement (other than an arrangement, under or arising as a consequence of an agreement of purchase and sale of the complex, for the possession or occupancy of the complex until ownership of the complex is transferred to the purchaser under the agreement) entered into for the purpose of its occupancy by an individual as a place of residence.
 - (ii) gives possession of the complex to a particular person under an agreement for
 - (A) the supply by way of sale of the building or part thereof in which the residential unit forming part of the complex is located, and
 - (B) the supply by way of lease of the land forming part of the complex or the supply of such a lease by way of assignment,

other than an agreement for the supply of a mobile home and a site for the home in a residential trailer park, or

- (iii) where the builder is an individual, occupies the complex as a place of residence, and
- (c) the builder, the particular person or an individual who is a tenant or licensee of the particular person is the first individual to occupy the complex as a place of residence after substantial completion of the construction or renovation,

the builder shall be deemed

- (d) to have made and received, at the later of the time the construction or substantial renovation is substantially completed and the time possession of the complex is so given to the particular person or the complex is so occupied by the builder, a taxable supply by way of sale of the complex, and
- (e) to have paid as a recipient and to have collected as a supplier, at the later of those times, tax in respect of the supply calculated on the fair market value of the complex at the later of those times.
- (2) Self-supply of residential condominium unit.—For the purposes of this Part, where
- (a) the construction or substantial renovation of a residential condominium unit is substantially completed,
- (b) the builder of the unit gives possession of the unit to a particular person who is the purchaser under an agreement of purchase and sale of the unit at a time when the condominium complex in which the unit is situated is not registered as a condominium,
- (c) the particular person or an individual who is a tenant or licensee of the particular person is the first individual to occupy the unit as a place of residence after substantial completion of the construction or renovation, and
- (d) the agreement of purchase and sale is at any time terminated (otherwise than by performance of the agreement) and another agreement of purchase and sale of the unit between the builder and the particular person is not entered into at that time,

the builder shall be deemed

- (e) to have made and received, at the time the agreement is terminated, a taxable supply by way of sale of the unit, and
- (f) except where possession of the unit was transferred to the particular person before 1991, to have paid as a recipient and to have collected as a supplier, at that time, tax in respect of the supply calculated on the fair market value of the unit at that time.
- (3) **Self-supply of multiple unit residential complex.**—For the purposes of this Part, where
 - (a) the construction or substantial renovation of a multiple unit residential complex is substantially completed,
 - (b) the builder of the complex
 - (i) gives possession of any residential unit in the complex to a particular person under a lease, licence or similar arrangement entered into for the purpose of its occupancy by an individual as a place of residence and the particular person is not a purchaser under an agreement of purchase and sale of the complex, or
 - (ii) where the builder is an individual, occupies any residential unit in the complex as a place of residence, and
 - (c) the builder, the particular person or an individual who is a tenant or licensee of the particular person is the first individual to occupy a residential unit in the complex as a place of residence after substantial completion of the construction or renovation,

the builder shall be deemed

(d) to have made and received, at the later of the time the construction or substantial renovation is substantially completed and the time possession of the unit is so given to the particular person or the unit is so occupied by the builder, a taxable supply by way of sale of the complex, and

- (e) to have paid as a recipient and to have collected as a supplier, at the later of those times, tax in respect of the supply calculated on the fair market value of the complex at the later of those times.
- (4) **Self-supply of addition to multiple unit residential complex.**—For the purposes of this Part, where
 - (a) the construction of an addition to a multiple unit residential complex is substantially completed,
 - (b) the builder of the addition
 - (i) gives possession of any residential unit in the addition to a particular person under a lease, licence or similar arrangement entered into for the purpose of its occupancy by an individual as a place of residence and the particular person is not a purchaser under an agreement of purchase and sale of the complex, or
 - (ii) where the builder is an individual, occupies any residential unit in the addition as a place of residence, and
 - (c) the builder, the particular person or an individual who is a tenant or licensee of the particular person is the first individual to occupy a residential unit in the addition as a place of residence after substantial completion of the construction of the addition,

the builder shall be deemed

- (d) to have made and received, at the later of the time the construction of the addition is substantially completed and the time possession of the unit is so given to the particular person or the unit is so occupied by the builder, a taxable supply by way of sale of the addition, and
- (e) to have paid as a recipient and to have collected as a supplier, at the later of those times, tax in respect of the supply calculated on the fair market value of the addition at the later of those times.
- (5) Exception for personal use.—Subsections (1) to (4) do not apply to a builder of a residential complex or an addition to a residential complex where
 - (a) the builder is an individual:
 - (b) at any time after the construction or renovation of the complex or addition is substantially completed, the complex is used primarily as a place of residence for the individual, an individual related to the individual or a former spouse of the individual;
 - (c) the complex is not used primarily for any other purpose between the time the construction or renovation is substantially completed and that time; and
 - (d) the individual has not claimed an input tax credit in respect of the acquisition of or an improvement to the complex.
- (6) Exception for student residence.—Subsections (1) to (4) do not apply to a builder of a residential complex or an addition to a residential complex where
 - (a) the builder is a university, public college or school authority; and
 - (b) the construction or renovation of the complex or addition is carried out, or the complex is acquired, primarily for the purpose of providing a place of residence for students attending the university or college or a school of the school authority.
 - (7) Remote work site.—For the purposes of this Part, where
 - (a) the builder of a residential complex or an addition to a residential complex is a registrant,

- (b) the construction or substantial renovation of the complex or addition is carried out, or the complex is acquired, for the purpose of providing a place of residence or lodging for an employee of the registrant at a location at which the employee is required to be in the performance of the duties of the employee's office or employment and at which, because of its remoteness from any established community, the employee could not reasonably be expected to establish and maintain a self-contained domestic establishment, and
- (c) the registrant makes, under this subsection, an election in prescribed form containing prescribed information in respect of the residential complex or the addition,

until the complex is supplied by way of sale, or is supplied by way of lease, licence or similar arrangement primarily to persons who are not employees of the registrant or individuals who are related to the employees, the supply of the complex or a residential unit in the complex as a place of residence or lodging shall be deemed not to be a supply and any occupation of the complex or unit as a place of residence or lodging shall be deemed not to be occupation as a place of residence or lodging.

- (8) [Repealed.]
- (9) Substantial completion.—For the purposes of this section, the construction or substantial renovation of a multiple unit residential complex or a condominium complex, or the construction of an addition to a multiple unit residential complex, shall be deemed to be substantially completed not later than the day all or substantially all of the residential units in the complex or addition are occupied after the construction or substantial renovation is begun.
- (10) Transfer of possession attributed to builder.—For the purposes of this section, where
 - (a) a builder of a residential complex or an addition to a multiple unit residential complex makes a supply of the complex or a residential unit in the complex or addition by way of lease, licence or similar arrangement and the supply is an exempt supply described by section 6.1 of Part I of Schedule V,
 - (b) the recipient of the supply is acquiring the complex or unit for the purpose of making one or more supplies of the complex, unit or residential units in the complex and those supplies are described by section 6 of Part I of Schedule V, and
 - (c) the builder at any time gives possession of the complex or unit to the recipient under the arrangement,

the builder shall be deemed to have at that time given possession of the complex or unit to an individual under a lease, licence or similar arrangement entered into for the purpose of its occupancy by an individual as a place of residence. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, ss. 56, 204.

- 192. Non-substantial renovation.—For the purposes of this Part, where in the course of a business of making supplies of real property a person renovates or alters a residential complex of the person and the renovation or alteration is not a substantial renovation, the person shall be deemed
 - (a) to have made and received a taxable supply, at the earlier of the time the renovation is substantially completed and the time ownership of the complex is transferred, for consideration equal to the total of all amounts each of which is an amount in respect of the renovation or alteration (other than the amount of consideration that was paid or payable by the person for a financial service or for any property or service in respect of which the person is required to pay tax) that would be included in determining the adjusted cost base

to the person of the complex for the purposes of the *Income Tax Act* if the complex were capital property of the person and the person were a taxpayer under that Act; and

(b) to have paid as a recipient and to have collected as a supplier, at that time, tax in respect of the supply, calculated on the total determined under paragraph (a). S.C. 1990, c. 45, s. 12.

Real Property Credits

- 193. (1) Sale of real property.—Where at a particular time a registrant makes a particular taxable supply of real property by way of sale, other than
 - (a) a supply deemed under subsection 206(5) or 207(2) to have been made, or
 - (b) a supply made by a public sector body (other than a financial institution) of property in respect of which an election by the body under section 211 is not in effect at the particular time.

the registrant may, notwithstanding section 170 and Subdivision d, claim an input tax credit for the reporting period in which tax in respect of the particular taxable supply becomes payable or is deemed to have been collected, as the case may be, equal to the amount determined by the formula

$A \times B \times C$

where

A is the lesser of

- (a) the total (in this subsection referred to as the "total tax charged in respect of the property") of the tax that was payable by the registrant in respect of the last acquisition of the property by the registrant and the tax that was payable by the registrant in respect of improvements to the property acquired or imported by the registrant after the property was last so acquired, and
- (b) the tax that is or would, but for section 167, be payable in respect of the particular taxable supply,
- B is the percentage that, immediately before the particular time, the use of the property otherwise than in commercial activities of the registrant was of the total use of the property, and

C is

- (a) where the registrant was entitled to claim a rebate under section 259 in respect of any tax included in the total tax charged in respect of the property and the particular taxable supply is not deemed under subsection 206(4) to have been made, the difference between 100% and the percentage prescribed for the purposes of that section that applied in determining the amount of that rebate, and
- (b) in any other case, 100%.
- (2) Sale by public sector bodies. —Where at a particular time a registrant that is a public sector body (other than a financial institution) makes a particular taxable supply of real property by way of sale (other than a supply that is deemed under subsection 200(2) to have been made) and, immediately before the time tax becomes payable in respect of the particular taxable supply, the property was not used by the registrant primarily in commercial activities of the registrant, except where subsection (1) applies, the registrant may, notwithstanding section 170 and Subdivision d, claim an input tax credit for the reporting period in which tax in respect

of the particular taxable supply became payable or is deemed to have been collected, as the case may be, equal to the amount determined by the formula

$A \times B$

where

A is the lesser of

- (a) the total (in this subsection referred to as the "total tax charged in respect of the property") of the tax that was payable by the registrant in respect of the last acquisition of the property by the registrant and the tax that was payable by the registrant in respect of improvements to the property acquired or imported by the registrant after the property was last so acquired, and
- (b) the tax that is or would, but for section 167, be payable in respect of the particular taxable supply, and

B is

- (a) where the registrant was entitled to claim a rebate under section 259 in respect of any tax included in the total tax charged in respect of the property, the difference between 100% and the percentage prescribed for the purposes of that section that applied in determining the amount of that rebate, and
- (b) in any other case, 100%.
- (3) [Repealed] S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 57.

Statement as to Use of Real Property

- **194. Incorrect statement.**—For the purposes of this Part, where a supplier makes a taxable supply by way of sale of real property and incorrectly states or certifies in writing to the recipient of the supply that the supply is an exempt supply described in any of sections 2 to 5.3, 8 and 9 of Part I of Schedule V, except where the recipient knows or ought to know that the supply is not an exempt supply,
 - (a) the tax payable in respect of the supply shall be deemed to be equal to the tax fraction of the consideration for the supply; and
 - (b) the supplier shall be deemed to have collected, and the recipient shall be deemed to have paid, that tax on the earlier of the day ownership of the property was transferred to the recipient and the day possession of the property was transferred to the recipient under the agreement for the supply. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 58.

Subdivision d. Capital property

- **195. Prescribed property.**—For the purposes of this Part, where a person acquires or imports prescribed property for use as capital property of the person, the property shall be deemed to be personal property and not real property. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 59.
- **195.1** (1) **Residential complex not capital property.**—For the purposes of this Part, other than sections 148 and 249, a residential complex shall be deemed not to be, at a particular time, capital property of a builder of the complex unless
 - (a) at or before the particular time, the construction or substantial renovation of the complex was substantially completed; and
 - (b) at or after the time the construction or substantial renovation of the complex was

- substantially completed and at or before the particular time, the builder received an exempt supply of the complex or was deemed under section 191 to have received a taxable supply of the complex.
- (2) **Addition not capital property.**—For the purposes of this Part, other than sections 148 and 249, an addition to a multiple unit residential complex shall be deemed not to be, at a particular time, capital property of a builder of the addition unless
 - (a) at or before the particular time, the construction of the addition was substantially completed; and
 - (b) at or after the time the construction of the addition was substantially completed and at or before the particular time, the builder received an exempt supply of the complex or was deemed under subsection 191(4) to have received a taxable supply of the addition. S.C. 1993, c. 27, s. 59.
- **195.2** (1) **Last acquisition or importation.**—For the purposes of this Part (other than Division III and Schedule VII), an importation of property shall not be considered in determining the last acquisition or importation of the property
 - (a) where tax under Division III was not paid on the property in respect of that importation because the property was included in section 1 or 9 of Schedule VII or the property was included in section 8 of that Schedule and was classified under heading 98.13 or 98.14 of Schedule I to the *Customs Tariff*, or would have been so classified but for Note 11(a) to Chapter 98 of that Schedule;
 - (b) where tax under Division III on the property in respect of that importation was calculated on a value determined under the *Value of Imported Goods (GST) Regulations*, other than section 8 or 12 or a prescribed section of those Regulations; or
 - (c) in prescribed circumstances.
- (2) **Importation of improvement.**—For the purposes of this Part (other than Division III and Schedule VII), where a person imports capital property of the person that was improved outside Canada and tax under Division III is payable on a value, determined under the *Value of Imported Goods (GST) Regulations*, that does not exceed the value of the improvement, the importation shall be deemed to be an importation of the improvement.
- (3) **Application before 1991.** For the purposes of determining the last acquisition or importation of property, this Part shall be deemed to have been in force at all times before 1991. **S.C.** 1993, c. 27, s. 60.
- **196. Intended and actual use.**—For the purposes of this Part, where a person at any time acquires, imports or appropriates property for use as capital property of the person to a particular extent in a particular way, the person shall be deemed to use the property immediately after that time to the particular extent in the particular way, S.C. 1990, c. 45, s. 12; **S.C.** 1993, c. 27, s. 61.
- **196.1 Appropriation to use as capital property.** For the purposes of this Part, where a registrant, at a particular time, appropriates property of the registrant for use as capital property of the registrant or in improving capital property of the registrant and, immediately before the particular time, the property was not capital property of the registrant or an improvement to capital property of the registrant,
 - (a) the registrant shall be deemed
 - (i) to have made, immediately before the particular time, a supply of the property by way of sale, and

- (ii) where the property was last acquired or imported by the registrant before the particular time for consumption, use or supply, or was consumed or used before the particular time, in the course of commercial activities of the registrant, to have collected, at the particular time, tax in respect of the supply calculated on the fair market value of the property at the particular time; and
- (b) the registrant shall be deemed to have received, at the particular time, a supply of the property by way of sale and to have paid, at the particular time, tax in respect of the supply equal to
 - (i) where the property was last acquired or imported by the registrant before the particular time for consumption, use or supply, or was consumed or used before the particular time, in the course of commercial activities of the registrant and the supply is not an exempt supply, tax calculated on the fair market value of the property at the particular time, and
 - (ii) in any other case, the amount determined by the formula

 $A \times B$

where

A is the lesser of

- (A) the tax that was payable by the registrant in respect of the last acquisition or importation of the property by the registrant, and
- (B) tax calculated on the fair market value of the property at the particular time, and

B is

- (A) where the registrant was entitled to claim a rebate under section 259 in respect of the tax that was payable by the registrant in respect of the last acquisition or importation of the property, the difference between 100% and the percentage prescribed for purposes of that section that applied in determining the amount of that rebate, and
- (B) in any other case, 100%. S.C. 1993, c. 27, s. 61.
- **197. Insignificant changes in use.**—For the purposes of subsections 206(2), (3) and (5), 207(2) and 208(2) and (3), where in any period
 - (a) beginning on the later of
 - (i) the day a registrant last acquired or imported property for use as capital property of the registrant, and
 - (ii) the day subsection 206(3) or (5), 207(2) or 208(3) last applied to the property, and
 - (b) ending at any time after that day,

the extent to which the registrant changed the use of the property in commercial activities of the registrant is less than 10% of the total use of the property, the registrant shall be deemed to have used the property throughout that period to the same extent and in the same way as the registrant used the property at the beginning of that period, unless the registrant is an individual who began in that period to use the property primarily for the personal use and enjoyment of the individual or a related individual. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 62.

198. Use in supply of financial services.—For the purposes of this Part, to the extent that a registrant who is not a financial institution uses property as capital property of the registrant in the making of supplies of financial services that relate to commercial activities of the

registrant, the registrant shall be deemed to use the property in those commercial activities. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 63.

198.1 Change in use caused by operation of Part.—Where

- (a) a registrant, because of the enactment of an amendment to this Part or Schedule V, is deemed under subsection 200(2), 203(2), 206(4) or 207(1) to have made a supply of property and to have collected, at a particular time, tax in respect of the supply, or
- (b) a registrant, because of
 - (i) the operation of paragraph 171(3)(b),
 - (ii) the application of paragraph 171.1(1)(b) at the time the registration of the registrant under this Part ceases to apply to particular commercial activities of the registrant, or
 - (iii) a branch or division of the registrant becoming a small supplier division within the meaning assigned by subsection 129(1),

is deemed under subsection 200(2), 203(2), 206(4) or 207(1) to have made a particular supply of

- (iv) property that was originally supplied to or imported by the registrant before 1991, or
- (v) tangible personal property that was originally supplied to the registrant in Canada before 1994 as used tangible personal property in circumstances in which tax was not payable in respect of the supply,

and to have collected, at a particular time, tax in respect of the particular supply,

for the purposes of determining the amount of tax that is deemed under that subsection to have been collected or paid at the particular time, the amount of tax calculated on the fair market value of the property at the particular time shall be deemed not to exceed the total of the tax that was or would, but for section 167, have been payable by the registrant in respect of the last acquisition or importation of the property by the registrant and the tax that was payable by the registrant in respect of improvements to the property acquired or imported by the registrant after the property was last so acquired or imported. S.C. 1993, c. 27, s. 64.

198.2 Capital acquisitions outside Canada.—Where

- (a) a registrant is the recipient of a taxable supply of personal property or a service made outside Canada,
- (b) but for the fact that the registrant was acquiring the property or service for consumption, use or supply exclusively in the course of commercial activities of the registrant, tax in respect of the supply would have become payable by the registrant at any time under section 218, and
- (c) the registrant
 - (i) in the case of a supply of personal property, acquired the property for use as capital property, or
 - (ii) in any case, acquired the property or service for consumption or use in improving capital property of the registrant that was used at that time exclusively in commercial activities of the registrant,

for the purposes of applying section 198.1, subsections 206(3), (4) and (5), section 207 and subsections 208(3) and 211(2), the registrant shall be deemed

- (d) to have paid at that time tax in respect of the supply equal to 7% of the value of the consideration for the supply determined in accordance with Division IV, and
- (e) to have claimed, in a return under Division V filed by the registrant for the reporting period of the registrant that includes that time, an input tax credit in respect of the property or service equal to that tax. S.C. 1993, c. 27, s. 65.

Capital Personal Property

- 199. (1) Application.—This section does not apply in respect of
- (a) property of a registrant that is a financial institution or a prescribed registrant; or
- (b) a passenger vehicle or an aircraft of a registrant who is an individual or a partnership.
- (2) **Acquisition of capital personal property.**—Where a registrant acquires or imports personal property for use as capital property,
 - (a) the tax payable by the registrant in respect of the supply to or importation by the registrant of the property shall not be included in determining an input tax credit of the registrant for any reporting period unless the property was acquired or imported for use primarily in commercial activities of the registrant; and
 - (b) where the registrant acquires or imports the property for use primarily in commercial activities of the registrant, the registrant shall, for the purposes of this Part, be deemed to have acquired or imported the property for use exclusively in commercial activities of the registrant.
- (3) **Beginning use of personal property.**—For the purposes of this Part, where a registrant last acquired or imported personal property for use as capital property of the registrant but not for use primarily in commercial activities of the registrant and the registrant begins, at a particular time, to use the property as capital property primarily in commercial activities of the registrant, except where the registrant becomes a registrant at the particular time, the registrant shall be deemed
 - (a) to have received, at the particular time, a supply of the property by way of sale; and
 - (b) except where the supply is an exempt supply, to have paid, at the particular time, tax in respect of the supply equal to the amount determined by the formula

$A \times B$

where

A is the lesser of

- (i) the total (in this subsection referred to as "the total tax charged in respect of the property") of the tax that was or would, but for section 167, have been payable by the registrant in respect of the last acquisition or importation of the property by the registrant and the tax that was payable by the registrant in respect of improvements to the property acquired or imported by the registrant after the property was last so acquired or imported, and
- (ii) tax calculated on the fair market value of the property at the particular time, and B is
 - (i) where the registrant was entitled to claim a rebate under section 259 in respect of any tax included in the total tax charged in respect of the property, the difference between 100% and the percentage prescribed for the purposes of that section that applied in determining the amount of that rebate, and

- (ii) in any other case, 100%.
- (4) **Improvement to capital personal property.**—Where a registrant acquires or imports an improvement to personal property that is capital property of the registrant, tax payable by the registrant in respect of the acquisition or importation of the improvement shall not be included in determining an input tax credit of the registrant unless, at the time that tax becomes payable or is paid without having become payable, the capital property is used primarily in commercial activities of the registrant.
- (5) Use of musical instrument.—For the purposes of subsections (2) and (3) and 200(2) and (3), where an individual who is a registrant uses a musical instrument acquired or imported by the individual in an employment of the individual or in a business carried on by a partnership of which the individual is a member, that use shall be deemed to be use in commercial activities of the individual. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 66.
 - 200. (1) Application.—This section does not apply in respect of
 - (a) property of a registrant that is a financial institution or a prescribed registrant; or
 - (b) a passenger vehicle or an aircraft of a registrant who is an individual or a partnership.
- (2) Ceasing use of personal property.—For the purposes of this Part, where a registrant last acquired or imported personal property for use as capital property primarily in commercial activities of the registrant and the registrant begins, at a particular time, to use the property primarily for other purposes, the registrant shall be deemed
 - (a) to have made, immediately before the particular time, a supply of the property by way of sale and to have collected, at the particular time, tax in respect of the supply calculated on the fair market value of the property at the particular time; and
 - (b) to have received, at the particular time, a supply of the property by way of sale and to have paid, at the particular time, tax in respect of the supply calculated on the fair market value of the property at the particular time.
- (3) Sale of personal property.—Notwithstanding paragraph 141.1(1)(a), for the purposes of this Part, where a registrant makes a supply by way of sale of personal property that is capital property of the registrant and, before the earlier of the time that ownership of the property is transferred to the recipient of the supply and the time possession of the property is transferred to the recipient under the agreement for the supply, the registrant was last using the property otherwise than primarily in commercial activities of the registrant, the supply shall be deemed to be made in the course of activities of the registrant that are not commercial activities.
- (4) Sale of personal property of a government.—Notwithstanding paragraph 141.1(1)(b) and subsection (3), for the purposes of this Part, where a government (other than a specified Crown agent) makes a supply by way of sale of personal property that is capital property of the government, the supply shall be deemed to have been made in the course of commercial activities of the government, S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 67.
- **201.** Value of passenger vehicle. —For the purposes of determining an input tax credit of a registrant who at any time acquires or imports a passenger vehicle for use as capital property in commercial activities of the registrant, the tax payable by the registrant in respect of the acquisition or importation of the vehicle at that time shall be deemed to be the lesser of
 - (a) the tax that was payable by the registrant in respect of the acquisition or importation of the vehicle at that time, and
 - (b) the amount determined by the formula

$A \times B$

where

A is the tax that would be payable by the registrant in respect of the vehicle if the registrant acquired the vehicle for consideration equal to the amount deemed under paragraph 13(7)(g) or (h) of the *Income Tax Act* to be, for the purposes of section 13 of that Act, the capital cost to a taxpayer of a passenger vehicle to which that paragraph applies, and

B is

- (i) where the registrant is deemed under subsection 199(3) or 206(2) or (3) to have acquired the vehicle or a portion thereof at that time and the registrant was entitled to claim a rebate under section 259 in respect of any acquisition or importation of the vehicle or any improvement to it, the difference between 100% and the percentage prescribed for the purposes of that section that applied in determining the amount of that rebate, and
- (ii) in any other case, 100%. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 68.
- **202.** (1) **Improvement to passenger vehicle.**—Where the consideration paid or payable by a registrant for an improvement to a passenger vehicle of the registrant increases the cost to the registrant of the vehicle to an amount that exceeds the amount deemed under paragraph 13(7)(g) or (h) of the *Income Tax Act* to be, for the purposes of section 13 of that Act, the capital cost to a taxpayer of a passenger vehicle in respect of which that paragraph applies, the tax calculated on that excess shall not be included in determining an input tax credit of the registrant for any reporting period of the registrant.
- (2) Input tax credit on passenger vehicle or aircraft.—Where a registrant who is an individual or a partnership acquires or imports a passenger vehicle or aircraft for use as capital property of the registrant, the tax payable (other than tax deemed to be payable under subsection (4)) by the registrant in respect of the acquisition or importation shall not be included in determining an input tax credit of the registrant unless the vehicle or aircraft was acquired or imported for use exclusively in commercial activities of the registrant.
- (3) **Improvement to passenger vehicle or aircraft.**—Where a registrant who is an individual or a partnership acquires or imports an improvement to a passenger vehicle or aircraft that is capital property of the registrant, the tax payable by the registrant in respect of the improvement shall not be included in determining an input tax credit of the registrant unless, throughout the period
 - (a) beginning on the later of the day the vehicle or aircraft, as the case may be, was originally acquired or imported by the registrant and the day the individual or partnership becomes a registrant, and
 - (b) ending on the day tax in respect of the improvement becomes payable or is paid without having become payable,

the vehicle or aircraft was used exclusively in commercial activities of the registrant.

(4) Non-exclusive use of passenger vehicle or aircraft.—Notwithstanding subsections (2) and (3), where a registrant who is an individual or a partnership at any time acquires or imports a passenger vehicle or aircraft, in respect of which tax is payable by the registrant, for use as capital property of the registrant but not for use exclusively in commercial activities of the registrant, for the purposes of determining an input tax credit of the registrant, the registrant shall be deemed

- (a) to have acquired the vehicle or aircraft on the last day of each taxation year of the registrant ending after that time; and
- (b) to have paid, on that day, tax in respect of the acquisition of the vehicle or aircraft equal to the amount determined by the formula

 $A \times B$

where

A is the tax fraction, and

B is

- (i) where an amount in respect of the vehicle or aircraft is required by paragraph 6(1)(e) or subsection 15(1) of the *Income Tax Act* to be included in computing the income of an individual for a taxation year of the individual ending in that taxation year of the registrant, nil, and
- (ii) in any other case, the capital cost allowance in respect of the vehicle or aircraft that was deducted under the *Income Tax Act* in computing the income of the registrant from those commercial activities for that taxation year of the registrant.
- (5) **Deemed acquisition.**—For the purpose of subsection (4), where at any time a registrant is deemed under section 203 to have made a taxable supply of a passenger vehicle or aircraft.
 - (a) the registrant shall be deemed to have acquired the vehicle or aircraft at that time; and
 - (b) tax shall be deemed to be payable at that time by the registrant in respect of the vehicle or aircraft, S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 69.
- **203.** (1) **Sale of passenger vehicle.**—Where a registrant, at a particular time in a reporting period of the registrant, makes a taxable supply by way of sale of a passenger vehicle that, immediately before the particular time, was used as capital property in commercial activities of the registrant, the registrant may, notwithstanding section 170, paragraphs 199(2)(a) and (4)(a) and subsection 202(1), claim an input tax credit for that period equal to the lesser of
 - (a) the amount determined by the formula

$$A - B$$

where

- A is the total, determined without reference to section 201, of the tax that was or would, but for section 167, have been payable by the registrant in respect of the last acquisition or importation of the vehicle by the registrant and the tax that was payable by the registrant in respect of improvements to the vehicle acquired or imported by the registrant after the property was last so acquired or imported, and
- B is the total of all rebates under section 259 and input tax credits that the registrant was entitled to claim in respect of any tax included in the total for A, and
- (b) the amount determined by the formula

$$C \times \frac{D}{E}$$

where

C is the amount determined under paragraph (a),

- D is the lesser of the value of the consideration for the taxable supply and the amount determined for E, and
- E is the total of all amounts, each of which is
 - (i) the consideration that was payable by the registrant or the value determined under section 215, as the case may be, in respect of the last acquisition or importation of the vehicle by the registrant, or
 - (ii) where the registrant acquired or imported an improvement to the vehicle after the vehicle was last so acquired or imported by the registrant, the consideration that was payable by the registrant or the value determined under section 215, as the case may be, in respect of the improvement.
- (2) Ceasing to use passenger vehicle, etc.—For the purposes of this Part, where a registrant who is an individual or a partnership acquired or imported a passenger vehicle or an aircraft for use as capital property exclusively in commercial activities of the registrant and the registrant begins, at any time, to use the vehicle or aircraft otherwise than exclusively in commercial activities of the registrant, the registrant shall be deemed to have
 - (a) made, immediately before that time, a taxable supply by way of sale of the vehicle or aircraft for consideration equal to its fair market value at that time; and
 - (b) collected, at that time, tax in respect of the supply, calculated on that consideration.
- (3) Sale of passenger vehicle, etc.—Notwithstanding paragraph 141.1(1)(a), for the purposes of this Part, where
 - (a) an individual or a partnership who is a registrant makes, at a particular time, a supply by way of sale of a passenger vehicle or an aircraft that is capital property of the registrant, and
 - (b) at any time after the individual or partnership became a registrant and before the particular time, the registrant did not use the vehicle or aircraft exclusively in commercial activities of the registrant,

the supply shall be deemed not to be a taxable supply. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 70.

- **204.** (1) **Application.**—This section does not apply to personal property of a financial institution having a cost to the institution of \$50,000 or less.
- (2) **Personal property of a financial institution.**—Where a financial institution is a registrant, subsections 206(2) to (5) apply, with such modifications as the circumstances require, to personal property acquired or imported by the institution for use as capital property of the institution, and to improvements to personal property that is capital property of the institution, as if the personal property were real property.
- (3) Credit on sale.—Where a financial institution is a registrant, subsection 193(1) applies, with such modifications as the circumstances require, to personal property (other than a passenger vehicle) acquired or imported by the institution for use as capital property of the institution, as if the personal property were real property. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 71.
- **205.** (1) **Financial institution making election for exempt supplies.**—Where an election made by a registrant under subsection 150(1) becomes effective at a particular time, the registrant was a financial institution immediately before the particular time and, as a result of the election becoming effective, the registrant reduces at the particular time the extent to which personal property of the registrant is used as capital property in commercial activities of the

registrant, subsections 193(1) and 206(4) and (5) apply, with such modifications as the circumstances require, to the reduction in use, as if the property were real property.

- (2) **Registrant becoming financial institution.**—Where a registrant at any time becomes a financial institution and, immediately before that time, the registrant was using personal property of the registrant as capital property of the registrant, the following rules apply:
 - (a) where, immediately before that time, the registrant was not using the property primarily in commercial activities of the registrant and, immediately after that time, the property is for use in commercial activities of the registrant, the registrant shall be deemed, for the purposes of this Part, to have changed at that time the extent to which the property is used in commercial activities of the registrant, and subsection 206(2) applies, with such modifications as the circumstances require, to the change in use as if the property were real property that was not used immediately before that time in commercial activities of the registrant; and
 - (b) where, immediately before that time, the registrant was using the property primarily in commercial activities of the registrant and, immediately after that time, the property is not for use exclusively in commercial activities of the registrant, the registrant shall be deemed, for the purposes of this Part, to have changed at that time the extent to which the property is used in commercial activities of the registrant, and subsections 193(1) and 206(4) and (5) apply, with such modifications as the circumstances require, to the change in use as if the property were real property used immediately before that time exclusively in commercial activities of the registrant.
- (3) **Registrant ceasing to be financial institution.**—Where a registrant at any time ceases to be a financial institution and, immediately before that time, the registrant was using personal property of the registrant as capital property of the registrant, the following rules apply:
 - (a) where, immediately before that time, the registrant was using the property as capital property but not exclusively in commercial activities of the registrant and, immediately after that time, the property is for use primarily in commercial activities of the registrant, the registrant shall be deemed, for the purposes of this Part, to have begun at that time to use the property exclusively in commercial activities of the registrant, and subsections 206(2) and (3) apply, with such modifications as the circumstances require, to the change in use as if the property were real property; and
 - (b) where, immediately before that time, the registrant was using the property as capital property in commercial activities of the registrant and, immediately after that time, the property is not for use primarily in commercial activities of the registrant, the registrant shall be deemed, for the purposes of this Part, to have ceased at that time to use the property in commercial activities of the registrant, and subsections 193(1) and 206(4) apply, with such modifications as the circumstances require, to the change in use as if the property were real property.
 - (4) Acquisition of a business. Notwithstanding section 197, where
 - (a) in acquiring a business or part of a business from a registrant, a financial institution that is a registrant is deemed under subsection 167(1) to have acquired property for use exclusively in commercial activities of the institution, and
 - (b) immediately after the time possession of the property is transferred to the institution under the agreement for the supply of the business or part, the property is for use by the

institution as capital property of the institution but not exclusively in commercial activities of the institution.

subsections 193(1) and 206(4) and (5) apply, with such modifications as the circumstances require, to the change in use of the property as if the property were real property.

(5) Idem.—Notwithstanding section 197, where

- (a) in acquiring a business or part of a business from a registrant, a financial institution that is a registrant is deemed under subsection 167(1) to have acquired property but not for use in commercial activities of the institution,
- (b) possession of the property is transferred to the institution under the agreement for the supply of the business or part after 1993, and
- (c) immediately after the transfer, the property is for use by the institution as capital property of the institution in commercial activities of the institution,

subsection 206(2) applies, with such modifications as the circumstances require, to the change in use of the property as if the property were real property.

(6) Amalgamation.—Where

- (a) a particular corporation that is not a financial institution is merged or amalgamated with one or more other corporations to form a corporation (in this subsection referred to as the "new corporation") that is a financial institution in circumstances to which section 271 applies,
- (b) the new corporation is a registrant, and
- (c) personal property that was capital property of the particular corporation becomes at any time the property of the new corporation as a consequence of the merger or amalgamation,

subsection (2) applies to the property as if the new corporation became a financial institution at that time.

(7) Winding-up.—Where

- (a) a particular corporation that is not a financial institution is wound up at a particular time in circumstances to which section 272 applies,
- (b) not less than 90% of the issued shares of each class of the capital stock of the corporation were, immediately before the particular time, owned by another corporation (in this subsection referred to as the "new corporation") that is a financial institution,
- (c) the new corporation is a registrant, and
- (d) personal property that was capital property of the particular corporation becomes at any time the property of the new corporation as a consequence of the winding-up,

subsection (2) applies to the property as if the new corporation became a financial institution at the particular time. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 71.

Capital Real Property

- **206.** (1) **Application.**—Subject to subsection 211(1), this section does not apply in respect of property acquired by a registrant who is
 - (a) an individual;
 - (b) a public sector body that is not a financial institution; or
 - (c) a prescribed registrant.

- (2) **Beginning use in commercial activities.** —For the purposes of this Part, where a registrant last acquired real property for use as capital property of the registrant but not for use in commercial activities of the registrant and the registrant begins, at a particular time, to use the property as capital property in commercial activities of the registrant, except where the registrant becomes a registrant at the particular time, the registrant shall be deemed
 - (a) to have received, at the particular time, a supply of the property by way of sale; and
 - (b) except where the supply is an exempt supply, to have paid, at the particular time, tax in respect of the supply equal to the amount determined by the formula

$A \times B$

where

A is the lesser of

- (i) the total (in this subsection referred to as "the total tax charged in respect of the property") of the tax that was payable by the registrant in respect of the last acquisition of the property by the registrant and the tax that was payable by the registrant in respect of improvements to the property acquired or imported by the registrant after the property was last so acquired, and
- (ii) tax calculated on the fair market value of the property at the particular time, and

B is

- (i) where the registrant was entitled to claim a rebate under section 259 in respect of any tax included in the total tax charged in respect of the property, the difference between 100% and the percentage prescribed for purposes of that section that applied in determining the amount of that rebate, and
- (ii) in any other case, 100%.
- (3) Increasing use in commercial activities.—Where a registrant last acquired real property for use as capital property in commercial activities of the registrant and the registrant increases, at a particular time, the extent to which the property is used in commercial activities of the registrant, for the purposes of determining an input tax credit of the registrant, the registrant shall be deemed
 - (a) to have received, immediately before the particular time, a supply of a portion of the property for use as capital property exclusively in commercial activities of the registrant; and
 - (b) except where the supply is an exempt supply, to have paid, at the particular time, tax in respect of the supply equal to the amount determined by the formula

$A \times B \times C$

where

A is the lesser of

- (i) the total (in this subsection referred to as "the total tax charged in respect of the property") of the tax that was or would, but for section 167, have been payable by the registrant in respect of the last acquisition of the property by the registrant and the tax that was payable by the registrant in respect of improvements to the property acquired or imported by the registrant after the property was last so acquired, and
- (ii) tax calculated on the fair market value of the property at the particular time.
- B is the extent (expressed as a percentage of the total use of the property by the registrant

at the particular time) to which the registrant increased the use of the property in commercial activities of the registrant at the particular time, and

C is

- (i) where the registrant was entitled to claim a rebate under section 259 in respect of any tax included in the total tax charged in respect of the property, the difference between 100% and the percentage prescribed for purposes of that section that applied in determining the amount of that rebate, and
- (ii) in any other case, 100%.
- (4) Ceasing use in commercial activities.—For the purposes of this Part, where a registrant last acquired real property for use as capital property in commercial activities of the registrant and the registrant begins, at a particular time, to use the property exclusively for other purposes, the registrant shall be deemed
 - (a) to have made, immediately before the particular time, a supply of the property by way of sale and, except where the supply is an exempt supply, to have collected, at the particular time, tax in respect of the supply equal to the amount determined by the formula

$$(A \times B \times C) + [D \times (100\% - B) \times E]$$

where

A is the tax calculated on the fair market value of the property at the particular time,

B is the extent (expressed as a percentage of the total use of the property by the registrant immediately before the particular time) to which the registrant used the property in commercial activities of the registrant immediately before the particular time,

C is

- (i) where
 - (A) the registrant was entitled to claim a rebate under section 259 in respect of any tax payable in respect of
 - (I) the last acquisition of the property by the registrant or, where the last acquisition of the property was deemed to have been made under subsection (2), the second last acquisition of the property by the registrant, or
 - (II) an improvement to the property acquired or imported by the registrant after the last or second last acquisition of the property by the registrant, as the case may be, or
 - (B) the registrant would have been entitled to claim a rebate under section 259 in respect of the tax payable in respect of the last acquisition of the property, the second last acquisition of the property or the improvement, as the case may be, but for the fact that the property was acquired by the registrant at the time of that last acquisition or second last acquisition, as the case may be, for use exclusively in commercial activities of the registrant,

the difference between 100% and the percentage prescribed for the purposes of that section that applied, or would have applied, in determining the amount of that rebate, and

- (ii) in any other case, 100%,
- D is the lesser of
 - (i) the total (in this subsection referred to as "the total tax charged in respect of the property") of the tax that was or would, but for section 167, have been payable by the

registrant in respect of the last acquisition of the property by the registrant and the tax that was payable by the registrant in respect of improvements to the property acquired or imported by the registrant after the property was last so acquired, and

(ii) tax calculated on the fair market value of the property at the particular time, and

E is

- (i) where the registrant was entitled to claim a rebate under section 259 in respect of any tax included in the total tax charged in respect of the property, or would have been so entitled but for the fact that the registrant last acquired the property for use exclusively in commercial activities of the registrant, the difference between 100% and the percentage prescribed for the purposes of that section that applied, or would have applied, in determining the amount of that rebate, and
- (ii) in any other case, 100%; and
- (b) to have received, at the particular time, a supply of the property by way of sale and, except where the supply is an exempt supply, to have paid, at the particular time, tax in respect of the supply equal to the amount determined under paragraph (a).
- (5) **Reducing use in commercial activities.**—Except where subsection (4) applies, where a registrant last acquired real property for use as capital property in commercial activities of the registrant and the registrant reduces, at a particular time, the extent to which the property is used in commercial activities of the registrant, for the purposes of determining the net tax of the registrant for the reporting period of the registrant that includes the particular time, the registrant shall be deemed
 - (a) to have made, immediately before the particular time, a supply of a portion of the property; and
 - (b) except where the supply is an exempt supply, to have collected, at the particular time, tax in respect of the supply equal to the amount determined by the formula

$A \times B \times C$

where

A is the lesser of

- (i) the total (in this subsection referred to as "the total tax charged in respect of the property") of the tax that was or would, but for section 167, have been payable by the registrant in respect of the last acquisition of the property by the registrant and the tax that was payable by the registrant in respect of improvements to the property acquired or imported by the registrant after the property was last so acquired, and
- (ii) tax calculated on the fair market value of the property at the particular time,
- B is the extent (expressed as a percentage of the total use of the property by the registrant at the particular time) to which the registrant reduced the use of the property in commercial activities of the registrant at the particular time, and

C is

(i) where the registrant was entitled to claim a rebate under section 259 in respect of any tax included in the total tax charged in respect of the property, or would have been so entitled but for the fact that the registrant last acquired the property for use exclusively in commercial activities of the registrant, the difference between 100% and the percentage prescribed for the purposes of that section that applied, or would have applied, in determining the amount of that rebate, and

- (ii) in any other case, 100%. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 72.
- **207.** (1) **Individual ceasing use in commercial activities.**—For the purposes of this Part, where an individual who is a registrant last acquired real property for use as capital property in commercial activities of the individual, and not primarily for the personal use and enjoyment of the individual or a related individual, and the individual begins, at a particular time, to use the property exclusively for other purposes, or primarily for the personal use and enjoyment of the individual or a related individual, the individual shall be deemed
 - (a) to have made, immediately before the particular time, a supply of the property by way of sale and, except where the supply is an exempt supply, to have collected, at the particular time, tax in respect of the supply equal to the amount determined by the formula

$$(A \times B) + [C \times (100\% - B)] - D$$

where

- A is the tax calculated on the fair market value of the property at the particular time,
- B is the extent (expressed as a percentage of the total use of the property by the individual immediately before the particular time) to which the individual used the property in commercial activities of the individual immediately before the particular time,

C is the lesser of

- (i) the total of the tax that was or would, but for section 167, have been payable by the individual in respect of the last acquisition of the property by the individual and the tax that was payable by the individual in respect of improvements to the property acquired or imported by the individual after the property was last so acquired, and
- (ii) tax calculated on the fair market value of the property at the particular time, and
- D is the tax, if any, that the individual is deemed under section 190 to have collected at the particular time in respect of the property; and
- (b) to have received, at the particular time, a supply of the property by way of sale and, except where the supply is an exempt supply, to have paid, at the particular time, tax in respect of the supply equal to the amount determined under paragraph (a).
- (2) Individual reducing use in commercial activities.—Except where subsection (1) applies, where an individual who is a registrant last acquired real property for use as capital property in commercial activities of the individual, and not primarily for the personal use and enjoyment of the individual or a related individual, and the individual reduces, at a particular time, the extent to which the property is used in commercial activities of the individual without beginning to use the property primarily for the personal use and enjoyment of the individual or a related individual, for the purposes of determining the net tax of the individual, the individual shall be deemed
 - (a) to have made, immediately before the particular time, a supply by way of sale of a portion of the property; and
 - (b) except where the supply is an exempt supply, to have collected, at the particular time, tax in respect of the supply equal to the amount determined by the formula

$$(A \times B) - C$$

where

A is the lesser of

(i) the total of the tax that was or would, but for section 167, have been payable by the individual in respect of the last acquisition of the property by the individual and the tax

that was payable by the individual in respect of improvements to the property acquired or imported by the individual after the property was last so acquired, and

- (ii) tax calculated on the fair market value of the property at the particular time.
- B is the extent (expressed as a percentage of the total use of the property by the individual at the particular time) to which the individual reduced the use of the property in commercial activities of the individual at the particular time, and
- C is the tax, if any, that the individual is deemed under section 190 to have collected at the particular time in respect of the property. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 73.
- **208.** (1) **Acquisition of capital real property by individual.**—Subject to this section, where an individual who is a registrant acquires real property for use as capital property of the individual but primarily for the personal use and enjoyment of the individual or a related individual, the tax payable by the individual in respect of the acquisition of the property shall not be included in determining an input tax credit of the individual.
- (2) Individual beginning use in commercial activities.—For the purposes of this Part, where an individual who is a registrant last acquired real property for use as capital property of the individual but primarily for the personal use and enjoyment of the individual or a related individual and the individual begins, at a particular time, to use the property as capital property in commercial activities of the individual, and not primarily for the personal use and enjoyment of the individual or a related individual, the individual shall be deemed
 - (a) to have received, at the particular time, a supply by way of sale of the property; and
 - (b) except where the supply is an exempt supply, to have paid, at the particular time, tax in respect of the supply equal to the lesser of
 - (i) the total of the tax that was payable by the individual in respect of the last acquisition of the property by the individual and the tax that was payable by the individual in respect of improvements to the property acquired or imported by the individual after the property was last so acquired, and
 - (ii) tax calculated on the fair market value of the property at the particular time.
- (3) Individual increasing use in commercial activities. —Where an individual who is a registrant last acquired real property for use as capital property in commercial activities of the individual and not primarily for the personal use and enjoyment of the individual or a related individual, and the individual increases, at a particular time, the extent to which the property is used in commercial activities of the individual without beginning to use the property primarily for the personal use and enjoyment of the individual or a related individual, for the purposes of determining an input tax credit of the individual, the individual shall be deemed
 - (a) to have received, at the particular time, a supply by way of sale of a portion of the property for use as capital property exclusively in commercial activities of the individual; and
 - (b) except where the supply is an exempt supply, to have paid, at the particular time, tax in respect of the supply equal to the amount determined by the formula

 $A \times B$

where

A is the lesser of

(i) the total of the tax that was or would, but for section 167, have been payable by the individual in respect of the last acquisition of the property by the individual and the tax

- that was payable by the individual in respect of improvements to the property acquired or imported by the individual after the property was last so acquired, and
- (ii) tax calculated on the fair market value of the property at the particular time, and
- B is the extent (expressed as a percentage of the total use of the property by the individual at the particular time) to which the individual increased the use of the property in commercial activities of the individual at the particular time.
- (4) Improvement to capital real property by individual.—Where an individual who is a registrant acquires or imports an improvement to real property that is capital property of the individual, the tax payable by the individual in respect of the improvement shall not be included in determining an input tax credit of the individual if, at the time that tax becomes payable or is paid without having become payable, the property is primarily for the personal use and enjoyment of the individual or a related individual. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 74.
- 209. (1) Real property of certain public sector bodies.—Where a registrant is a public service body (other than a financial institution or a government) or a specified Crown agent (other than a financial institution), subsections 199(2) to (4) and 200(2) to (4) apply, with such modifications as the circumstances require, to real property acquired by the registrant for use as capital property of the registrant, and to improvements to real property that is capital property of the registrant, as if the real property were personal property.
 - (2) Exception.—Notwithstanding subsection (1), subsection 200(3) does not apply to
 - (a) a supply of a residential complex or an interest therein made by way of sale by a public service body; or
 - (b) a supply of real property made by way of sale by a public service body to an individual.
 - (3) [Repealed] S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 75.
 - 210. [Added S.C. 1990, c. 45, s. 12; repealed S.C. 1993, c. 27, s. 75.]
- **211.** (1) **Election for real property of a public service body.**—Where a public service body files an election made under this subsection in respect of
 - (a) real property that is capital property of the body,
 - (b) real property of the body that is held by the body in inventory for the purpose of supply, or
 - (c) real property acquired by the body by way of lease, licence or similar arrangement for the purpose of making a supply of the property by way of lease, licence or similar arrangement or making a supply of the arrangement by way of assignment,

throughout the period the election is in effect, subsection 193(1) and section 206 apply, and section 209 does not apply, to the property.

- (2) **Deemed sale where election.**—For the purposes of this Part, where a public service body has filed an election made under subsection (1) in respect of real property described in paragraph (1)(a) or (b) that takes effect on a particular day and the body does not acquire the property on the particular day or become a registrant on the particular day, the body shall be deemed
 - (a) to have made, immediately before the particular day, a taxable supply of the property by way of sale and to have collected, on the particular day, tax in respect of the supply equal to the lesser of

- (i) the total of the tax that was or would, but for section 167, have been payable by the body in respect of the last acquisition of the property by the body and the tax that was payable by the body in respect of improvements to the property acquired or imported by the body after the property was last so acquired, and
- (ii) tax calculated on the fair market value of the property on the particular day; and
- (b) to have received, on the particular day, a taxable supply of the property by way of sale and to have paid, on the particular day, tax in respect of the supply equal to the amount determined under paragraph (a).
- (3) **Effect of election.**—An election under subsection (1) in respect of real property of a person is effective for the period beginning on the day specified in the election and ending on the day that the person specifies in a notice of revocation of the election filed under this section.
- (4) **Deemed sale where revocation.**—For the purposes of this Part, where an election made under subsection (1) by a public service body in respect of real property described in paragraph (1)(a) or (b) is revoked and ceases to be effective on a day and the body does not cease to be a registrant on that day, the body shall be deemed
 - (a) to have made, immediately before that day, a taxable supply of the property by way of sale and to have collected, on that day, tax in respect of the supply calculated on the fair market value of the property on that day; and
 - (b) to have received, on that day, a taxable supply of the property by way of sale and to have paid, on that day, tax in respect of the supply calculated on the fair market value of the property on that day.
- (5) Manner and form of election or revocation.—An election made under subsection (1) by a person and a notice of revocation of such an election shall
 - (a) be made in prescribed form containing prescribed information;
 - (b) specify the real property in respect of which the election or notice applies and the day the election becomes effective or, in the case of a notice of revocation, ceases to be effective; and
 - (c) be filed with the Minister in prescribed manner within one month after the end of the reporting period of the person in which the election becomes effective or, in the case of a notice of revocation, ceases to be effective. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 76.

DIVISION III

TAX ON IMPORTATION OF GOODS

- **212.** Imposition of tax. Subject to this Part, every person who is liable under the *Customs Act* to pay duty on imported goods, or who would be so liable if the goods were subject to duty, shall pay to Her Majesty in right of Canada a tax on the goods equal to 7% of the value of the goods, S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 77.
- **213.** Exception.—No tax under this Division is payable in respect of goods included in Schedule VII. S.C. 1990, c. 45, s. 12.
- 213.1 Security.—For the purposes of this Division, the Minister may require a person mentioned in section 212 who imports goods to provide security, in an amount determined by the Minister and subject to such terms and conditions as the Minister may specify, for the payment of any amount that is or may become payable by the person under this Division where provisions of the *Customs Act*, the *Customs Tariff* or any other laws relating to customs under

which security may be required do not apply to the payment of that amount. S.C. 1993, c. 27, s. 78.

- **213.2** (1) **Import certificate.**—The Minister may, on the request of a registrant who imports goods, issue to the registrant, subject to such conditions as the Minister may specify, an import certificate in respect of goods of a particular class, indicating an effective date and bearing a number to be disclosed when the goods are accounted for under section 32 of the *Customs Act*, where it can reasonably be expected that the registrant will be importing the goods in circumstances in which the goods would be included in Schedule VII.
- (2) **Application.**—A request for an import certificate shall contain prescribed information and be filed with the Minister in prescribed manner.
- (3) Cancellation.—The Minister may, after giving a person to whom an import certificate has been issued reasonable written notice, cancel the import certificate of the person if
 - (a) the person fails to comply with any condition attached to the certificate or any provision of this Division,
 - (b) the Minister determines that it is no longer required for the purposes for which it was issued, or generally for the purposes of this Division, or
 - (c) it can reasonably be expected that the person will no longer be importing goods of a class in respect of which the certificate was issued in circumstances in which the goods would be included in Schedule VII.

and, where the Minister cancels the import certificate of a person, the Minister shall notify the person in writing of the cancellation and the effective date of the cancellation.

- (4) **Application after cancellation.**—Where the Minister has cancelled the import certificate of a person in circumstances described in paragraph (3)(a), the Minister shall not issue a new certificate under subsection (1) before the day that is two years after the day on which the cancellation is effective.
- (5) **Cessation.**—An import certificate issued under this section ceases to have effect on the earlier of
 - (a) the effective date of the cancellation of the certificate under subsection (3), and
 - (b) the day that is three years after the effective date of the certificate. S.C. 1993, c. 27, s. 78.
- **214.** Payment of tax.—The tax on goods under this Division shall be paid and collected under the *Customs Act*, and interest and penalties shall be imposed, calculated, paid and collected under that Act, as if the tax were a customs duty levied on the goods under the *Customs Tariff* and, for those purposes, the *Customs Act*, with such modifications as the circumstances require, applies subject to this Division. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 79.
- **215.** (1) **Value of goods.**—For the purposes of this Division, the value of goods shall be deemed to be equal to the total of
 - (a) the value of the goods, as it would be determined under the *Customs Act* for the purpose of calculating duties imposed on the goods at a percentage rate, whether the goods are in fact subject to duty, and
 - (b) the amount of all duties and taxes, if any, payable thereon under the *Customs Tariff*, the *Special Import Measures Act*, this Act (other than this Part) or any other law relating to customs.
 - (2) **Idem.**—Notwithstanding subsection (1), for the purposes of this Division, the value

of goods imported in prescribed circumstances shall be determined in prescribed manner. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 80.

215.1 (1) Rebate for returned goods.—Where

- (a) a person paid tax under this Division on goods that were acquired by the person on consignment, approval, sale-or-return basis or other similar terms,
- (b) the goods are, within sixty days after their release and before they are used or consumed otherwise than on a trial basis, exported by the person for the purpose of returning them to the supplier and are not damaged after their release and before the exportation, and
- (c) within four years after the tax was paid, the person files with the Minister an application, in prescribed form containing prescribed information, for a rebate of the tax,

the Minister shall, subject to section 263, pay a rebate to the person equal to the amount of the tax paid on the goods.

(2) Rebate for goods damaged, etc.—Where

- (a) a person paid an amount as tax under this Division on goods that were imported
 - (i) for consumption, use or supply otherwise than exclusively in the course of a commercial activity of the person, or
 - (ii) for consumption, use or supply in the course of a commercial activity of the person and the person was, at the time of the release of the goods, a small supplier who was not registered under Subdivision d of Division V,
- (b) the Minister has, under any of sections 73, 74 and 76 of the *Customs Act*, granted an abatement or refund of the whole or part of the duties paid on the goods,
- (c) the person has not been and is not entitled to be compensated under a warranty for loss suffered because of any of the circumstances described in those sections by receiving a supply of replacement parts that are goods included in section 5 of Schedule VII, and
- (d) within four years after the amount was paid as tax under this Division, the person files with the Minister an application, in prescribed form containing prescribed information, for a rebate of the amount,

the Minister shall, subject to section 263, pay a rebate to the person equal to the amount determined by the formula

$$(A \times B) + (A \times \frac{B}{C} \times D)$$

where

- A is the rate of tax imposed under subsection 165(1) at the time the amount paid as tax under this Division was paid,
- B is the amount of the abatement or refund granted under the Customs Act.
- C is the amount of the duties that were the subject of the abatement or refund, and
- D is the value for duty of the goods under that Act.
 - (3) Idem.—Where
 - (a) a person paid an amount as tax under this Division on goods that were imported
 - (i) for consumption, use or supply otherwise than exclusively in the course of a commercial activity of the person, or

- (ii) for consumption, use or supply in the course of a commercial activity of the person and the person was, at the time of the release of the goods, a small supplier who was not registered under Subdivision d of Division V,
- (b) if the goods had been subject to duties under the *Customs Act*, the Minister would, because of any of the circumstances described in paragraph 73(a) or (b) or 74(1)(a), (b) or (c) or subsection 76(1) of that Act, have granted, under section 73, 74 or 76 of that Act, an abatement or refund of the whole or part of the duties paid on the goods,
- (c) the person has not been and is not entitled to be compensated under a warranty for loss suffered because of any of those circumstances by receiving a supply of replacement parts that are goods included in section 5 of Schedule VII, and
- (d) within four years after the amount was paid as tax under this Division, the person files with the Minister an application, in prescribed form containing prescribed information, for a rebate of the amount,

subject to section 263, sections 73, 74 (except paragraph 74(1)(d)) and 76 of that Act apply, with such modifications as the circumstances require, as though the amount paid by the person as tax were duties paid on the goods under that Act. S.C. 1993, c. 27, s. 81.

- **216.** (1) **Meaning of "determination of the tax status".**—In this section, "determination of the tax status" of goods means a determination, re-determination or further redetermination that the goods are, or are not, included in Schedule VII.
- (2) **Application of** *Customs Act.*—Subject to subsections (4) to (6), the *Customs Act* (other than subsections 67(2) and (3) and sections 68 and 70) and the regulations made under that Act apply, with such modifications as the circumstances require, to the determination of the tax status of goods for the purposes of this Division as if it were the determination, redetermination or further re-determination, as the case requires, of the tariff classification of the goods.
- (3) **Idem.**—The *Customs Act* and the regulations made under that Act apply, with such modifications as the circumstances require, to the appraisal, re-appraisal or further re-appraisal of the value of goods for the purposes of this Division as if it were the appraisal, re-appraisal or further re-appraisal, as the case requires, of the value for duty of the goods.
- (4) **Appeals of determination of tax status.**—In applying the *Customs Act* to a determination of the tax status of goods,
 - (a) the references in paragraphs 64(d) and (e) and subsection 67(1) of that Act to the "Canadian International Trade Tribunal" shall be read as references to the "Tax Court of Canada"; and
 - (b) the reference in subsection 67(1) of that Act to the "Secretary of the Canadian International Trade Tribunal" shall be read as a reference to the "Registrar of the Tax Court of Canada".
- (5) Application of Part IX and Tax Court of Canada Act.—The provisions of this Part and of the Tax Court of Canada Act that apply to an appeal taken under section 302 apply, with such modifications as the circumstances require, to an appeal taken under subsection 67(1) of the Customs Act from a decision of the Deputy Minister made under section 63 or 64 of that Act in a determination of the tax status of goods as if the decision of the Deputy Minister were a confirmation of an assessment or a reassessment made by the Minister under subsection 301(3) or (4) as a consequence of a notice of objection filed under subsection 301(1) by the person to whom the Deputy Minister is required to give notice under section 63 or 64 of the Customs Act, as the case may be, of the decision.

(6) Rebates.—Where

- (a) because of an appraisal, a re-appraisal or a further re-appraisal of the value of goods or a determination of the tax status of goods, it is determined that the amount that was paid as tax under this Division on the goods exceeds the amount of tax that is required under this Division to be paid on the goods, and
- (b) if the tax under this Division on the goods were a customs duty on the goods levied under the $Customs\ Tariff$, a refund of the excess would be given under paragraph 58(2)(b), 62(1)(b) or 65(1)(b) of the $Customs\ Act$,

a rebate of the excess shall, subject to section 263, be paid to the person who paid the excess, and the provisions of the *Customs Act* that relate to the payment of such refunds and interest on such refunds apply, with such modifications as the circumstances require, as if the rebate of the excess tax were a refund of duty.

(7) **Application of s. 69 of** *Customs Act.*—Subject to section 263, section 69 of the *Customs Act* applies, with such modifications as the circumstances require, where an appeal in respect of the value of goods or a determination of the tax status of goods is taken for the purpose of determining whether tax under this Division on the goods is payable or of determining the amount of such tax. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 82.

DIVISION IV

TAX ON IMPORTED TAXABLE SUPPLIES OTHER THAN GOODS

217. Definitions.—In this Division.

- "imported taxable supply".—"imported taxable supply" means
 - (a) a taxable supply (other than a zero-rated or prescribed supply) of a service made outside Canada to a person who is resident in Canada, other than a supply of a service that is
 - (i) acquired for consumption, use or supply exclusively in the course of commercial activities of the person or activities that are engaged in exclusively outside Canada by the person and that are not part of a business or an adventure or concern in the nature of trade engaged in by the person in Canada,
 - (ii) consumed by an individual exclusively outside Canada (other than a training service the supply of which is made to a person who is not a consumer),
 - (iii) in respect of real property situated outside Canada,
 - (iv) a service (other than a custodial or nominee service in respect of securities of the person) in respect of tangible personal property that is
 - (A) situated outside Canada at the time the service is performed, or
 - (B) exported as soon after the service is performed as is reasonable having regard to the circumstances surrounding the exportation and is not consumed, used or supplied in Canada after the service is performed and before the exportation of the property,
 - (v) a transportation service, or
 - (vi) a service rendered in connection with criminal, civil or administrative litigation outside Canada, other than a service rendered before the commencement of such litigation,

- (b) a taxable supply (other than a zero-rated or prescribed supply) of tangible personal property made by a non-resident person who is not registered under Subdivision d of Division V to a recipient who is a registrant where
 - (i) physical possession of the property is transferred to the recipient in Canada by another registrant who
 - (A) made a supply in Canada of the property by way of sale, or a supply in Canada of a service of manufacturing or producing the property, to the non-resident person, or
 - (B) acquired physical possession of the property for the purpose of making a supply of a commercial service in respect of the property to the non-resident person,
 - (ii) the recipient gives the other registrant a certificate of the recipient described in paragraph 179(2)(c), and
 - (iii) the recipient is not acquiring the property for consumption, use or supply exclusively in the course of commercial activities of the recipient or the property is a passenger vehicle that the recipient is acquiring for use in Canada as capital property in commercial activities of the recipient and that has a capital cost to the recipient exceeding the amount deemed under paragraph 13(7)(g) or (h) of the *Income Tax Act* to be the capital cost of the vehicle to the recipient for the purposes of section 13 of that Act,
- (b.1) a taxable supply (other than a zero-rated or prescribed supply) of tangible personal property made at a particular time by a non-resident person who is not registered under Subdivision d of Division V to a particular recipient who is resident in Canada, where
 - (i) the property is delivered or made available in Canada to the particular recipient and the particular recipient is not a registrant who is acquiring the property exclusively for consumption, use or supply in the course of commercial activities of the recipient, and
 - (ii) the non-resident person previously made a taxable supply of the property by way of lease, licence or similar arrangement to a registrant who was not dealing at arm's length with the non-resident person or who was related to the particular recipient, the property was delivered or made available in Canada to the registrant, the registrant was entitled to claim an input tax credit in respect of the property or was not required to pay tax under this Division in respect of the supply only because the registrant acquired the property exclusively for consumption, use or supply in the course of commercial activities of the registrant, and that supply was the last supply of the property made before the particular time by the non-resident person to a registrant, or
- (c) a taxable supply (other than a zero-rated or prescribed supply) of intangible personal property made outside Canada to a person who is resident in Canada, other than a supply of property that
 - (i) is acquired for consumption, use or supply exclusively in the course of commercial activities of the person or activities that are engaged in exclusively outside Canada by the person and that are not part of a business or an adventure or concern in the nature of trade engaged in by the person in Canada,
 - (ii) may not be used in Canada, or
 - (iii) relates to real property situated outside Canada, to a service to be performed wholly outside Canada or to tangible personal property situated outside Canada;

"reporting period".—"reporting period" of a recipient means

- (a) where the recipient is a registrant, a reporting period of the recipient as determined under sections 245 to 251, and
- (b) in any other case, a calendar quarter. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 83.
- **218.** (1) **Imposition of tax.**—Subject to this Part, every recipient of an imported taxable supply shall pay to Her Majesty in right of Canada a tax equal to 7% of the value of the consideration for the imported taxable supply.
- (2) When tax payable.—The tax under this Division on an imported taxable supply is payable by the recipient on the earlier of the day the consideration for the supply is paid and the day the consideration for the supply becomes due. S.C. 1990, c. 45, s. 12.
- 219. (1) Preparation of returns.—Every person who is liable to pay tax under this Division (in this section referred to as the "taxpayer") shall prepare a return in prescribed form containing prescribed information for the reporting period of the person in which the tax becomes payable.
- (2) Time and manner for filing returns and remitting tax.—Every taxpayer shall file each return prepared under subsection (1) with the Minister in prescribed manner and remit the amount of tax under this Division that became payable in the reporting period to which the return relates to the Receiver General not later than
 - (a) where the reporting period to which the return relates is the fiscal year of the taxpayer, the day that is three months after the end of the reporting period; and
 - (b) in any other case, the day that is one month after the end of the reporting period to which the return relates. S.C. 1990, c. 45, s. 12.
- **220.** Supplies between branches.—For the purposes of this Division, where a person carries on a business through a permanent establishment of the person in Canada and through another permanent establishment outside Canada.
 - (a) any transfer of personal property or rendering of a service by one permanent establishment to the other permanent establishment shall be deemed to be a supply of the property or service;
 - (b) in respect of that supply, the permanent establishments shall be deemed to be separate persons who deal with each other at arm's length;
 - (c) the value of the consideration for that supply shall be deemed to be the fair market value of the supply at the time the property is so transferred or the service is so rendered; and
 - (d) the consideration for that supply shall be deemed to have become due and to have been paid, by the permanent establishment (in this paragraph referred to as "the recipient") to which the property was transferred or the service was rendered, to the other permanent establishment at the end of the taxation year of the recipient in which the property was transferred or the service was rendered. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 84.

DIVISION V COLLECTION AND REMITTANCE OF DIVISION ILTAX

Subdivision a. Collection

221. (1) Collection of tax. —Every person who makes a taxable supply shall, as agent of

Her Majesty in right of Canada, collect the tax under Division II payable by the recipient in respect of the supply.

- (2) **Exception.**—A supplier (other than a prescribed supplier) who makes a taxable supply of real property by way of sale is not required to collect tax under Division II payable by the recipient in respect of the supply where
 - (a) the supplier is a non-resident person or is resident in Canada by reason only of subsection 132(2):
 - (b) the recipient is registered under Subdivision d and the supply is not a supply of a residential complex made to an individual; or
 - (c) the recipient is a prescribed recipient.
- (3) **Idem.**—Where a carrier who makes a particular taxable supply of a service of transporting tangible personal property
 - (a) is provided with a declaration referred to in section 7 of Part VII of Schedule VI by the shipper, and
 - (b) at or before the time the tax in respect of the particular supply becomes payable the carrier did not know and could not reasonably be expected to know that
 - (i) the property was not being shipped for export,
 - (ii) the transportation by the carrier was not part of a continuous outbound freight movement in respect of the property, and
 - (iii) there was or was to be any diversion of the property to a final destination in Canada,

the carrier is not required to collect tax in respect of the particular supply or any supply that is incidental to the particular supply.

- (3.1) **Export certificate.**—Where a registrant who makes a taxable supply of tangible personal property is provided with a certificate referred to in section 1 of Part V of Schedule VI by the recipient of the supply and, at or before the time that tax in respect of the supply becomes payable, the registrant did not know and could not reasonably be expected to have known that the property would not be exported by the recipient in the circumstances described in that section, the registrant is not required to collect tax in respect of the supply.
- (4) **Definitions.**—In subsection (3), "carrier", "continuous outbound freight movement" and "shipper" have the same meanings as in Part VII of Schedule VI. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 85.
- **221.1** (1) **Meaning of "inventory".**—In this section, "inventory" of a person means tangible personal property of the person acquired in Canada or imported by the person for supply by way of sale in the ordinary course of a business carried on by the person in Canada.
- (2) **Export certificate.**—The Minister may, on the application of a person who is registered under Subdivision d of Division V, authorize the person to use, on or after a particular day in a fiscal year of the person and subject to such conditions as the Minister may from time to time specify, a certificate (in this section referred to as an "export certificate") for the purposes of section 1 of Part V of Schedule VI, where it can reasonably be expected
 - (a) that at least 90% of the total of all consideration for supplies to the person of items of inventory acquired in Canada by the person in the twelve month period commencing immediately after the particular day will be attributable to supplies that would be included in that section if it were read without reference to paragraph (d) thereof; and

- (b) that the total of all consideration, included in determining the income of a business of the person for the year, for supplies made outside Canada by the person of items of inventory of the person that are not consumed, used, processed, transformed or altered after having been acquired in Canada or imported by the person and before being so supplied by the person will equal or exceed 90% of the total of all consideration, included in determining that income, for supplies made by the person of items of inventory of the person.
- (3) **Application.**—An application for authority to use an export certificate shall be made in prescribed form containing prescribed information and be filed with the Minister in prescribed manner.
- (4) **Notice of authorization.**—Where the Minister authorizes a registrant to use an export certificate, the Minister shall notify the registrant in writing of the authorization and the effective date of the authorization.
- (5) **Revocation.**—The Minister may revoke, as of a particular day, an authorization granted under subsection (2) to a registrant where
 - (a) the registrant fails to comply with any condition attached to the authorization or any provision of this Part, or
 - (b) it can reasonably be expected that the requirements of paragraphs (2)(a) and (b) would not be met if the period referred to in paragraph 2(a) were the twelve month period commencing on the particular day,

and, where the Minister revokes the authorization, the Minister shall notify the registrant in writing of the revocation and the effective date of the revocation.

- (6) **Deemed revocation.**—An authorization granted to a registrant at any time under subsection (2) shall be deemed to have been revoked, effective after the last day of a fiscal year of the registrant ending after that time, where
 - (a) the fraction determined by the formula

 $\frac{A}{R}$

where

- A is the total of all consideration paid or payable by the registrant for items of inventory that were acquired in Canada by the registrant in the year in the course of a business of the registrant and in respect of which the registrant provided to the suppliers thereof an export certificate, and
- B is the total of all consideration paid or payable by the registrant for items of inventory acquired in Canada by the registrant in the year in the course of that business.

exceeds

(b) the fraction determined by the formula

 $\frac{C}{D}$

where

C is the total of all consideration, included in determining the income from that business for the year, for supplies made outside Canada by the registrant of items of inventory of the registrant that were not consumed, used, processed, transformed or altered after

- having been acquired in Canada or imported by the registrant and before being so supplied by the registrant, and
- D is the total of all consideration, included in determining that income, for supplies made by the registrant of items of inventory of the registrant.
- (7) **Cessation.**—An authorization granted under subsection (2) to a registrant ceases to have effect on the earlier of
 - (a) the day on which a revocation of the authorization becomes effective, and
 - (b) the day that is three years after the day on which the authorization, or its renewal, became effective.
- (8) **Application after revocation.**—Where an authorization granted to a registrant under subsection (2) is revoked, effective on a particular day, the Minister shall not grant to the registrant another authorization under that subsection that becomes effective before
 - (a) where the authorization was revoked in circumstances described in paragraph (5)(a), the day that is two years after the particular day; and
 - (b) in any other case, the first day of the second fiscal year of the registrant commencing after the particular day. S.C. 1993, c. 27, s. 86.
- **222.** (1) Amounts collected held in trust.—Subject to subsection (1.1), where a person collects an amount as or on account of tax under Division II, the person shall, for all purposes, be deemed to hold the amount in trust for Her Majesty until it is remitted to the Receiver General or withdrawn under subsection (2).
- (1.1) **Amounts collected before bankruptcy.**—Subsection (1) does not apply, at or after the time a person becomes a bankrupt (within the meaning of the *Bankruptcy and Insolvency Act*), to any amounts that, before that time, were collected or became collectible by the person as or on account of tax under Division II.
- (2) **Withdrawal from trust.**—A person who holds tax or amounts in trust by reason of subsection (1) may withdraw from the aggregate of the moneys so held in trust
 - (a) the amount of any input tax credit claimed by the person in a return under this Division filed by the person in respect of a reporting period of the person, and
 - (b) any amount that may be deducted by the person in determining the net tax of the person for a reporting period of the person,

as and when the return under this Division for the reporting period in which the input tax credit is claimed or the deduction is made is filed with the Minister.

- (3) Amounts in trust not part of estate.—In the event of any liquidation, assignment, receivership or bankruptcy of or by a person, an amount equal to the amount deemed under subsection (1) to be held in trust for Her Majesty shall, for all purposes, be deemed to be separate from and to form no part of the estate in liquidation, assignment, receivership or bankruptcy, whether or not that amount has in fact been kept separate and apart from the person's own moneys or from the assets of the estate. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 87.
- **223.** (1) **Disclosure of tax.**—Where a registrant makes a taxable supply, the registrant shall indicate to the recipient, either in prescribed manner or in the invoice or receipt issued to, or in an agreement in writing entered into with, the recipient in respect of the supply,
 - (a) the consideration paid or payable by the recipient for the supply and the tax payable in respect of the supply in a manner that clearly indicates the amount of the tax; or

- (b) that the amount paid or payable by the recipient for the supply includes the tax payable in respect of the supply. S.C. 1990, c. 45, s. 12.
- (2) **Particulars.**—A person who makes a taxable supply to another person shall, on the request of the other person, forthwith furnish to the other person in writing such particulars of the supply as may be required for the purposes of this Part to substantiate a claim by the other person for an input tax credit or rebate in respect of the supply.
- 224. Right of supplier to sue for tax remitted.—Where a supplier has made a taxable supply to a recipient, is required under this Part to collect tax from the recipient in respect of the supply, has complied with subsection 223(1) in respect of the supply and has accounted for or remitted the tax payable by the recipient in respect of the supply to the Receiver General but has not collected the tax from the recipient, the supplier may bring an action in a court of competent jurisdiction to recover the tax from the recipient as though it were a debt due by the recipient to the supplier. S.C. 1990, c. 45, s. 12.

Subdivision b. Remittance of tax

225. (1) **Net tax.**—Subject to this Subdivision, the net tax for a particular reporting period of a person is the positive or negative amount determined by the formula

A - B

where

A is the total of

- (a) all amounts that became collectible and all other amounts collected by the person in the particular reporting period as or on account of tax under Division II, and
- (b) all amounts that are required under this Part to be added in determining the net tax of the person for the particular reporting period; and

B is the total of

- (a) all amounts each of which is an input tax credit for the particular reporting period or a preceding reporting period of the person claimed by the person in the return under this Division filed by the person for the particular reporting period, and
- (b) all amounts each of which is an amount that may be deducted by the person under this Part in determining the net tax of the person for the particular reporting period and that is claimed by the person in the return under this Division filed by the person for the particular reporting period.
- (2) **Restriction.**—An amount shall not be included in the total for A in the formula set out in subsection (1) for a reporting period of a person to the extent that that amount was included in that total for a preceding reporting period of the person.
- (3) **Idem.**—An amount shall not be included in the total for B in the formula set out in subsection (1) for a reporting period of a person to the extent that
 - (a) that amount was included in the total for B in the formula in determining the net tax for a preceding reporting period of the person; or
 - (b) before the end of the period, that amount became refundable to the person under this or any other Act of Parliament or was remitted to the person under the *Financial Administration Act* or the *Customs Tariff*.
- (4) Limitation. —An input tax credit of a registrant for a particular reporting period of the registrant shall not be claimed by the registrant unless it is claimed in a return under this

Division filed by the registrant on or before the day that is four years after the day on or before which the return under this Division for the particular reporting period of the registrant is required to be filed.

- (5) **Idem.**—Where a registrant makes an exempt supply by way of sale of a residential complex, the registrant shall not claim an input tax credit in respect of
 - (a) the last acquisition by the registrant of the complex, or
 - (b) the acquisition or importation by the registrant, after the complex was last acquired by the registrant, of an improvement to the complex,

in a return filed on or after the day the registrant transfers ownership or possession of the complex to the recipient of the supply.

- (6) **Idem.**—Where a trustee is appointed under the *Bankruptcy and Insolvency Act* to act in the administration of the estate of a registrant who is a bankrupt,
 - (a) the total of all input tax credits claimed, and all amounts deducted, in a return filed after the appointment for a reporting period of the registrant ending before the appointment shall not exceed the total of
 - (i) the amount that would be the net tax for the period if no input tax credits were claimed, and no amounts were deducted, in determining the net tax for that period, and
 - (ii) all amounts required under this Part to be remitted by the registrant in respect of reporting periods ending before that period and all amounts payable under this Part by the registrant as penalty, interest, an instalment of tax or a repayment in respect of those reporting periods, and
 - (b) an input tax credit, or an amount that may be deducted in determining net tax, for a reporting period of the registrant ending before the appointment shall not be claimed or deducted in a return for a reporting period of the registrant ending after the appointment,

unless, on or before the day that return is filed, all returns required under this Part to be filed for, or in respect of acquisitions of real property made in, reporting periods of the registrant ending before the appointment have been filed and all amounts required under this Part to be remitted by the registrant in respect of those reporting periods and all amounts payable under this Part by the registrant as penalty, interest, an instalment of tax or a repayment in respect of those reporting periods have been remitted or paid, as the case may be. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, ss. 88, 203.

- **226.** (1) **Meaning of "returnable container".**—In this section, "returnable container" means a beverage container (other than a usual container for a beverage the supply of which is included in Part III of Schedule VI) of a class that
 - (a) is ordinarily acquired by consumers;
 - (b) when acquired by consumers, is ordinarily filled and sealed; and
 - (c) is ordinarily supplied empty by consumers for consideration.
- (2) **Separate supply of beverage and container.**—For the purposes of this section, where a person supplies a beverage in a returnable container,
 - (a) the provision of the container shall be deemed to be a supply separate from, and not incidental to, the provision of the beverage;
 - (b) section 137 does not apply to deem the container to form part of the beverage; and
 - (c) the consideration for the supply of the container shall be deemed to be equal to that

part of the total consideration for the beverage and the container that is reasonably attributable to the container.

- (3) **Tax collectible on returnable containers.**—Tax that is collected or that becomes collectible by a registrant in respect of a supply of a returnable container shall not be included in determining the net tax of the registrant.
- (4) **Input tax credit for returnable containers.**—Tax that is paid or that becomes payable by a registrant in respect of a supply of a returnable container shall not be included in determining an input tax credit of the registrant unless the registrant is acquiring the container for the purpose of making a zero-rated supply of the container or a supply of the container outside Canada.
- (5) **Application.**—Subsections (3) and (4) do not apply to a registrant in respect of a supply of a returnable container of a particular class made by or to the registrant where, at the time tax in respect of the supply becomes payable, the usual practice of the registrant is
 - (a) to charge consideration for supplies of filled and sealed containers of that class that exceeds the consideration the registrant pays to registrants for supplies of filled and sealed containers of that class;
 - (b) to charge consideration for supplies of empty containers of that class made to other registrants that exceeds the consideration the registrant pays or would pay to other registrants for supplies of empty containers of that class;
 - (c) to pay consideration for supplies of empty containers of that class received from persons who are not registrants that is less than the total of the consideration that the registrant charges for supplies of empty containers of that class and tax calculated on that consideration:
 - (d) to import filled and sealed containers of that class;
 - (e) to engage other persons to fill and seal containers of that class for the registrant; or
 - (f) to manufacture, produce or fill and seal returnable containers of any class.
- (6) Change in practice.—Where subsection (3) at any time ceases to apply to a registrant in respect of a returnable container owned by the registrant at that time and the registrant was not entitled, because of subsection (4), to claim an input tax credit in respect of the last acquisition of the container by the registrant, for the purposes of this Part, the registrant shall be deemed to have received at that time a supply of the container and to have paid at that time tax in respect of the supply equal to the tax that was payable in respect of that last acquisition of the container.
- (7) **Idem.**—Where subsection (3) at any time begins to apply to a registrant in respect of a returnable container owned by the registrant at that time and the registrant was entitled to claim an input tax credit in respect of the last acquisition of the container by the registrant, for the purposes of this Part, the registrant shall be deemed
 - (a) to have made immediately before that time a supply of the container and to have collected at that time tax in respect of the supply equal to the tax that was payable by the registrant in respect of that last acquisition of the container; and
 - (b) to have received at that time a supply of the container and to have paid at that time tax in respect of the supply equal to the tax referred to in paragraph (a).
- (8) Supplies under s. 156 or 167.—For the purposes of this Part, where a supplier at any time makes a supply of a returnable container to a registrant in circumstances in which section 156 or 167 applies and, if those sections had not applied, subsection (3) would not have applied

to the supplier in respect of the supply and subsection (4) would have applied to the registran in respect of the container,

- (a) the registrant shall be deemed to have made a supply of the container at that time and to have collected at that time tax in respect of the supply calculated on the consideration that the registrant would charge if the registrant made the supply to a person with whom the registrant was dealing at arm's length, and subsection (3) does not apply to the registrant in respect of the supply; and
- (b) the registrant shall be deemed to have received a supply of the container immediately after that time and to have paid immediately after that time tax in respect of the supply equal to the amount determined under paragraph (a).
- (9) **Idem.**—For the purposes of this Part, where a supplier at any time makes a supply of a returnable container to a registrant in circumstances in which section 156 or 167 applies and, if those sections had not applied, subsection (3) would have applied to the supplier in respect of the supply and subsection (4) would not have applied to the registrant in respect of the container, the registrant shall be deemed to have paid at that time tax in respect of the supply calculated on the consideration that the registrant would charge if the registrant made the supply to a person with whom the registrant was dealing at arm's length. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 89.
- **227.** (1) **Election for streamlined accounting.**—A registrant who is a prescribed registrant or a member of a prescribed class of registrants may elect to determine the net tax of the registrant for a reporting period during which the election is in effect by a prescribed method.
- (2) Form and contents of election.—An election made under subsection (1) by a registrant shall
 - (a) be filed in prescribed manner with the Minister in prescribed form containing prescribed information;
 - (b) set out the day the election is to become effective, which day shall be the first day of a reporting period of the registrant; and
 - (c) be filed
 - (i) where the first reporting period of the registrant in which the election is in effect is a fiscal year of the registrant, on or before the first day of the second fiscal quarter of that year or such later day as the Minister may determine on application of the registrant, and
 - (ii) in any other case, on or before the day on or before which the return of the registrant is required to be filed under this Division for the first reporting period of the registrant in which the election is in effect or on such later day as the Minister may determine on application of the registrant.
- (3) **Cessation.**—An election made under this section by a registrant ceases to have effect on the earlier of
 - (a) the first day of the reporting period of the registrant in which the registrant ceases to be a prescribed registrant or a member of a prescribed class of registrants, and
 - (b) the day on which a revocation of the election becomes effective.
- (4) **Restriction on revocation.**—An election made under subsection (1) by a registrant may be revoked by the registrant.
- (4.1) **Effective date and notice of revocation.**—A revocation of an election made under subsection (1) by a registrant

- (a) shall become effective on the first day of a reporting period of the registrant but not earlier than one year after the election became effective; and
- (b) is not a valid revocation unless a notice of revocation of the election in prescribed form containing prescribed information is filed in prescribed manner with the Minister on or before the day on or before which the return under this Division is required to be filed for the last reporting period of the registrant in which the election is effective.
- (4.2) Exception.—Where a registrant makes an election under subsection (1) to determine the net tax of the registrant in accordance with a prescribed Part of the *Streamlined Accounting (GST) Regulations*,
 - (a) paragraph (2)(a) does not apply to the election;
 - (b) notwithstanding subsection (2), the election shall be made before a return under this Division is filed for the reporting period of the registrant in which the election becomes effective; and
 - (c) paragraph (4.1)(b) does not apply to a revocation of the election.
- (5) **Restriction on input tax credits.**—Where an election made under this section by a registrant ceases to have effect, an input tax credit (other than a prescribed input tax credit) of the registrant for a reporting period of the registrant during which the election was in effect shall not be claimed by the registrant in a reporting period that begins after the election ceased to have effect. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 90; S.C. 1994, c. 9, s. 13.
- **228.** (1) Calculation of net tax.—Every person who is required to file a return under this Division shall in the return calculate the net tax of the person for the reporting period for which the return is required to be filed.
- (2) **Remittance.**—Where the net tax for a reporting period of a person is a positive amount, the person shall remit that amount to the Receiver General on or before the day on or before which the return for that period is required to be filed.
- (3) **Net tax refund.**—Where the net tax for a reporting period of a person is a negative amount, the person may claim in the return for that reporting period that amount as a net tax refund for the period, payable to the person by the Minister.
- (4) Real property supplied by person not required to collect tax. —Where tax under Division II is payable by a person in respect of a supply of real property (other than a supply deemed to have been made) that is made to the person in circumstances in which subsection 221(2) applies, the person shall pay the tax to the Receiver General and file with the Minister in prescribed manner a return in respect of the tax in prescribed form containing prescribed information.
 - (a) where the person is a registrant and acquired the property for use or supply primarily in the course of commercial activities of the person, on or before the day on or before which the person's return for the reporting period in which the tax became payable is required to be filed: and
 - (b) in any other case, on or before the last day of the month following the month in which the tax became payable.
 - (5) [Repealed.]
- (6) **Set-off of refunds or rebates.** Where at any time a person files a particular return as required under this Part for a reporting period in which it is determined that an amount of tax (in this subsection referred to as the "remittance amount") is required under subsection (2) or (4)

to be remitted by the person and files with that return another return as required under this Part in which the person claims

- (a) a refund to the payment of which the person is entitled at that time under this Part, or
- (b) a rebate to the payment of which the person is entitled at that time under Division VI, the following rules apply:
 - (c) for the purposes of subsections (2) and (4), the person shall be deemed to have remitted at that time on account of the person's remittance amount the lesser of
 - (i) the remittance amount, and
 - (ii) the amount of the refund or rebate, as the case may be,
 - (d) where in the other return the person claims a refund, the person shall, for the purpose of subsection 169(4), be deemed to have filed the particular return before filing the return in which the refund was claimed and, for the purpose of this Part, the Minister shall be deemed to have paid to the person at that time an amount as a refund equal to the lesser of
 - (i) the remittance amount, and
 - (ii) the refund referred to in paragraph (a), and
 - (e) where in the other return the person claims a rebate, the Minister shall, for the purpose of Division VI, be deemed to have paid to the person at that time an amount as a rebate equal to the lesser of
 - (i) the rebate referred to in paragraph (b), and
 - (ii) the amount, if any, by which that rebate exceeds the excess of the remittance amount over any refund referred to in paragraph (a).
- (7) **Refunds and rebates of another person.**—A person may, in prescribed circumstances and subject to prescribed conditions and rules, reduce or offset the tax required under subsections (2) and (4) to be remitted by that person at any time by the amount of any refund or rebate to which another person may at that time be entitled under this Act. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, ss. 91, 203.
- **229.** (1) **Payment of net tax refund.**—Where a net tax refund payable to a person is claimed in a return filed under this Division by the person, the Minister shall pay the refund to the person with all due dispatch after the return is filed.
- (2) **Restriction.**—A net tax refund for a reporting period of a person shall not be paid to the person under subsection (1) until such time as all returns required to be filed under this Division by the person for the reporting period and all preceding reporting periods have been filed with the Minister.
- (3) **Interest on refund.**—Where a net tax refund for a reporting period of a person is paid to the person under subsection (1), interest at the prescribed rate shall be paid to the person on the net tax refund for the period beginning on the day that is twenty-one days after the later of
 - (a) the day the return in which the refund is claimed is filed with the Minister, and
- (b) the day the requirement under subsection (2) is fulfilled, and ending on the day the refund is paid.
- (4) **Minimum interest.**—Interest of less than one dollar shall not be paid under subsec-
- tion (3). S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 203.

 230. (1) Refund of overpayment.—Where the amount paid by a person on account of the net tax of the person for a reporting period exceeds the amount of the net tax remittable by

the person for the period, the Minister shall refund the excess with all due dispatch after the return of the person for the period is filed.

- (2) **Restriction.**—A refund for a reporting period of a person shall not be paid under subsection (1) to the person until such time as
 - (a) where the person is a registrant, all returns required to be filed under this Division by the person for the reporting period and all preceding reporting periods have been filed with the Minister; and
 - (b) in any other case, all returns required to be filed under this Division by the person for the reporting period have been filed with the Minister.
- (3) **Interest on refund.**—Where a refund for a reporting period of a person is paid to the person under subsection (1), interest at the prescribed rate shall be paid to the person on the refund for the period beginning on the day that is twenty-one days after the later of
 - (a) the day the return in which the refund is claimed is filed with the Minister, and
 - (b) the day the requirement under subsection (2) is fulfilled,

and ending on the day the refund is paid.

- (4) Minimum interest.—Interest of less than one dollar shall not be paid under subsection (3), S.C. 1990, c. 45, s. 12.
- 230.1 Overpayment of refund or interest.—Where an amount is paid to, or applied to a liability of, a person as a refund, or as interest, under this Division and the person is not entitled to the refund or interest, as the case may be, or the amount paid or applied exceeds the refund or interest, as the case may be, to which the person is entitled, the person shall pay to the Receiver General an amount equal to the refund, interest or excess, as the case may be, on the day the refund, interest or excess, as the case may be, is paid to, or applied to a liability of, the person. S.C. 1993, c. 27, s. 92.
 - 230.2 (1) Definitions.—In this section,
- "certified institution".—"certified institution" has the meaning assigned by section 2 of Part XIV of Schedule III;
- "specified property".—"specified property" means goods described in section 1 of Part XIV of Schedule III.
- (2) **Deduction from net tax.**—Where a registrant is a certified institution in a particular reporting period of the registrant, the registrant may, in determining the net tax for the particular reporting period or for a reporting period that ends within four years after the end of the particular period, deduct
 - (a) the total of all amounts that became collectible, or were collected without having become collectible, by the registrant in the particular period and in 1991 as or on account of tax under Division II in respect of specified property; S.C. 1993, c. 27, s. 92.
 - (b) 75% of the total of all amounts that became collectible, or were collected without having become collectible, by the registrant in the particular period and in 1992 as or on account of tax under Division II in respect of specified property;
 - (c) 50% of the total of all amounts that became collectible, or were collected without having become collectible, by the registrant in the particular period and in 1993 as or on account of tax under Division II in respect of specified property; and
 - (d) 25% of the total of all amounts that became collectible, or were collected without

having become collectible, by the registrant in the particular period and in 1994 as or on account of tax under Division II in respect of specified property. S.C. 1993, c. 27, s. 92.

- 231. (1) Bad debts.—Where a particular person has made a taxable supply (other than a zero-rated supply) in the course of a commercial activity for consideration to a person with whom the particular person was dealing at arm's length and has filed a return accounting for, and remitted tax under Division II in respect of, the supply as required under this Division, to the extent that it is established that the consideration and tax have become in whole or in part a bad debt, the particular person may, in determining the net tax for the reporting period of the particular person in which the bad debt is written off in the particular person's books of account or for a reporting period that ends within four years after the end of that period, deduct an amount equal to the tax fraction of the bad debt written off.
- (2) **Idem.**—Where a listed financial institution that is a member of a closely related group or of a prescribed group has at any time purchased an account receivable at face value and on a non-recourse basis from another person that was at that time a member of the group, to the extent that it is established that the account receivable has become in whole or in part a bad debt, the institution may, in determining its net tax for its reporting period in which the bad debt is written off in its books of account or for a reporting period that ends within four years after the end of that period, deduct an amount to the extent that the other person could have so deducted an amount under subsection (1) if the other person had not sold the account receivable and had written off the bad debt in the person's books of account.
- (3) **Recovery of bad debt.**—Where a person recovers all or part of a bad debt in respect of which the person has made a deduction under subsection (1) or (2), the person shall, in determining the net tax for the reporting period of the person in which the bad debt or part thereof is recovered, add an amount equal to the tax fraction of the bad debt or part thereof so recovered. S.C. 1990, c. 45, s. 12.
- 232. (1) Refund or adjustment of tax.—Where a particular person has charged to, or collected from, another person an amount as or on account of tax under Division II in excess of the tax under that Division that was collectible by the particular person from the other person, the particular person may, in or within four years after the end of the reporting period of the particular person in which the amount was so charged or collected,
 - (a) where the excess amount was charged but not collected, adjust the amount of tax charged; and
 - (b) where the excess amount was collected, refund or credit the excess amount to that other person.
- (2) **Adjustment.**—Where a particular person has charged to, or collected from, another person tax under Division II calculated on the consideration or a part thereof for a supply and, for any reason, the consideration or part is subsequently reduced, the particular person may, in or within four years after the end of the reporting period of the particular person in which the consideration was so reduced.
 - (a) where tax calculated on the consideration or part was charged but not collected, adjust the amount of tax charged by subtracting the portion of the tax that was calculated on the amount by which the consideration or part was so reduced; and
 - (b) where the tax calculated on the consideration or part was collected, refund or credit to that other person the portion of the tax that was calculated on the amount by which the consideration or part was so reduced.
 - (3) Credit or debit notes.—Where a particular person adjusts, refunds or credits an

amount in favour of, or to, another person in accordance with subsection (1) or (2), the following rules apply:

- (a) the particular person shall, within a reasonable time, issue to the other person a credit note, containing prescribed information, for the amount of the adjustment, refund or credit, unless the other person issues a debit note, containing prescribed information, for the amount:
- (b) the amount may be deducted in determining the net tax of the particular person for the reporting period of the particular person in which the credit note is issued to the other person or the debit note is received by the particular person, to the extent that the amount has been included in determining the net tax for the reporting period or a preceding reporting period of the particular person; and
- (c) the amount shall be added in determining the net tax of the other person for the reporting period of the other person in which the debit note is issued to the particular person or the credit note is received by the other person, to the extent that the amount has been included in determining an input tax credit claimed by the other person in a return filed for the reporting period or a preceding reporting period of the other person.
- (4) **Application.**—This section does not apply in circumstances in which section 161 or 176 applies. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 93.
- 233. (1) Meaning of "specified amount".—In this section, "specified amount", in respect of a patronage dividend paid by a person in a fiscal year of the person, means the amount determined by the formula

$$A \times \frac{(B + D)}{(C + D)}$$

- A is the amount of the patronage dividend;
- B is the total value of all consideration that became due, or was paid without having become due, in the immediately preceding fiscal year of the person while the person was a registrant for taxable supplies (other than supplies by way of sale of capital property of the person and zero-rated supplies) made in Canada by the person;
- C is the total value of all consideration that became due, or was paid without having become due, in the immediately preceding fiscal year of the person for taxable supplies (other than supplies by way of sale of capital property of the person) made in Canada by the person; and
- D is the total of all tax that became payable, or was paid without having become payable, in the immediately preceding fiscal year of the person in respect of taxable supplies tother than supplies by way of sale of capital property of the person) made by the person.
- (2) **Patronage dividends.**—For the purposes of this Part, where, at any time in a fiscal year of a particular person, the particular person pays to another person a patronage dividend all or part of which is in respect of taxable supplies (other than zero-rated supplies) made by the particular person to the other person, the particular person shall be deemed
 - (a) to have reduced, at that time, the total consideration for those supplies by an amount equal to the consideration fraction of
 - (i) the specified amount in respect of the dividend, or
 - (ii) where the particular person has made an election under this subparagraph that is in effect for that fiscal year, the part of the dividend that is in respect of taxable supplies (other than zero-rated supplies) made to the other person; and

- (b) to have made, at that time, the appropriate adjustment, refund or credit in favour of, or to, the other person under subsection 232(2).
- (3) **Exception.**—Subsection (2) does not apply to a patronage dividend paid by a person in a fiscal year of the person for which an election made by the person under this subsection is in effect, in which event the dividend shall be deemed not to be a reduction of the consideration for any supplies.
- (4) **Time for election.**—An election made under subparagraph (2)(a)(ii) or subsection (3) by a person shall be made before any patronage dividend is paid by the person in the fiscal year of the person in which the election is to take effect.
- (5) **Revocation of election.**—An election made under subparagraph (2)(a)(ii) or subsection (3) by a person may be revoked by the person before any dividend is paid by the person in the fiscal year of the person in which the revocation is to take effect.
- (6) **Date of payment of dividend.**—For the purposes of this section, a dividend shall be deemed to be paid on the day that it is declared. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 94.
- **234.** (1) **Deduction for housing rebate.**—Where, in the circumstances described in subsection 254(4) or 254.1(4), a builder pays to, or credits in favour of, an individual an amount on account of a rebate referred to therein and transmits the application of the individual for the rebate to the Minister in accordance with subsection 254(5) or 254.1(5), the builder may deduct the amount in determining the net tax of the builder for the reporting period of the builder in which the amount was paid or credited.
- (2) **Deduction for rebate in respect of supplies to non-residents.**—Where, in the circumstances described in subsection 252(3), 252.1(8) or 252.4(2) or (4), a registrant pays to, or credits in favour of, a person an amount on account of a rebate referred to therein, the registrant may deduct the amount in determining the net tax of the registrant for
 - (a) the reporting period of the registrant that includes the particular day that is the later of the last day on which any tax to which the rebate relates became payable and the day on which the amount is paid or credited; or
 - (b) any subsequent reporting period of the registrant for which a return is filed within one year after the particular day. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 95.
- **235.** (1) **Net tax where passenger vehicle leased.**—Where, in a taxation year of a registrant, tax becomes payable, or is paid without having become payable, by the registrant in respect of a supply by way of lease of a passenger vehicle and
 - (a) the total of the consideration for the supply that would be deductible in computing the registrant's income for the year for the purposes of the *Income Tax Act*, if the registrant were a taxpayer under that Act and that Act were read without reference to section 67.3 thereof,

exceeds

(b) the amount in respect of that consideration that is, or would be if the registrant were a taxpayer under the *Income Tax Act*, deductible in computing the registrant's income for the year for the purposes of that Act,

there shall be added in determining the net tax for the appropriate reporting period of the registrant an amount determined by the formula

 $A \times B \times C$

- A is the ratio obtained by dividing that excess by that consideration,
- B is the tax paid or payable in respect of that consideration (other than tax that, by reason of section 170, may not be included in determining an input tax credit of the registrant), and
- C is the proportion of the total use of the vehicle that is use[d] in commercial activities of the registrant.
- (2) **Appropriate reporting periods.**—For the purposes of subsection (1), the appropriate reporting period of a registrant in respect of a supply by way of lease to the registrant of a passenger vehicle in a taxation year of the registrant is
 - (a) where the registrant ceases in or at the end of that taxation year to be registered under Subdivision d, the last reporting period of the registrant in that year;
 - (b) where the reporting period of the registrant in that taxation year is that taxation year, that reporting period; and
 - (c) in any other case, the reporting period of the registrant that begins immediately after that taxation year. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 96.
- **236.** (1) Food, beverages and entertainment.—Where a registrant is the recipient of, or pays an allowance in respect of, a supply of food, beverages or entertainment and subsection 67.1(1) of the *Income Tax Act* applies, or would apply if the registrant were a taxpayer under that Act, in respect of the supply or allowance, 50% of the total of all amounts, each of which is an input tax credit claimed in a return for a reporting period in a fiscal year of the registrant in respect of the supply or allowance, shall be added in determining the net tax
 - (a) where the registrant ceases in or at the end of that fiscal year to be registered under Subdivision d, for the last reporting period of the registrant in that fiscal year;
 - (b) where the reporting period of the registrant in that fiscal year is that fiscal year, for that reporting period; and
 - (c) in any other case, for the reporting period of the registrant that begins immediately after the end of that fiscal year.
- (2) **Exception.**—Subsection (1) does not apply to a charity. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 97; S.C. 1994, c. 9, s. 14; S.C. 1994, c. 29, s. 13.
- 237. (1) Instalments.—Where the reporting period of a registrant is a fiscal year or a period determined under subsection 248(3), the registrant shall, within one month after the end of each fiscal quarter of the registrant ending in the reporting period, pay to the Receiver General an instalment equal to ½ of the registrant's instalment base for that reporting period.
- (2) **Instalment base.**—A registrant's instalment base for a particular reporting period of the registrant is the lesser of
 - (a) an amount equal to
 - (i) in the case of a reporting period determined under subsection 248(3), the amount determined by the formula

$$A \times \frac{365}{B}$$

where

A is the net tax for the particular reporting period, and

B is the number of days in the particular reporting period, and

(ii) in any other case, the net tax for the particular reporting period, and

(b) the amount determined by the formula

$$C \times \frac{365}{D}$$

where

- C is the total of all amounts each of which is the net tax for a reporting period of the registrant ending in the twelve month period immediately preceding the particular reporting period, and
- D is the number of days in the period commencing on the first day of the first of those preceding reporting periods and ending on the last day of the last of those preceding reporting periods.
- (3) **Minimum instalment base.**—For the purposes of subsection (1), where a registrant's instalment base for a reporting period is less than \$1,500, it shall be deemed to be nil.
 - (4) [Repealed.]
- (5) Instalment base in transitional year.—Notwithstanding subsection (2), where a reporting period of a registrant to whom subsection (1) applies begins before 1992, for the purposes of subsection (1), the instalment base for that reporting period of the registrant is the lesser of
 - (a) 75% of the amount determined under paragraph (2)(a) for that reporting period, and
 - (b) the amount determined by the formula

$$A \times B \times \frac{365}{C}$$

where

A is the prescribed percentage,

- B is the total consideration received by or due to the registrant for supplies of property (other than supplies by way of sale of capital property of the registrant) or services by the registrant in the fiscal year of the registrant that immediately preceded that reporting period, and
- C is the number of days in the fiscal year of the registrant that immediately preceded that reporting period. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 98.

Subdivision c. Returns

- **238.** (1) **Filing required.**—Every registrant shall file a return with the Minister for each reporting period of the registrant
 - (a) where the registrant's reporting period is the fiscal year, within three months after the end of the year; and
 - (b) in every other case, within one month after the end of the reporting period of the registrant.
- (2) **Idem.**—Every person who is not a registrant shall file a return with the Minister for each reporting period of the person for which net tax is remittable by the person within one month after the end of the reporting period.
- (3) Non-resident performers, etc.—Notwithstanding subsection (1), where, in a reporting period of a non-resident person, the person makes a taxable supply in Canada of an

admission in respect of a place of amusement, a seminar, an activity or an event, the person shall

- (a) file with the Minister a return for that period on or before the earlier of
 - (i) the day on or before which a return for that period is required to be filed under subsection (1), and
 - (ii) the day the person, or one or more employees of the person who are involved in the commercial activity in which the supply was made, leaves Canada; and
- (b) on or before that earlier day, remit all amounts that became collectible, and all other amounts collected by the person, in the period as or on an account of tax under Division II.
- (4) **Form and content.**—Every return under this Subdivision shall be made in prescribed form containing prescribed information and shall be filed in prescribed manner. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 99; S.C. 1994, c. 94, c. 9, s. 15.
 - 238.1 (1) [Temporary cessation of filing] Definitions.—In this section,
- "cumulative amount".—"cumulative amount" for a reporting period of a registrant means the total of
 - (a) the amount that would be the registrant's net tax for the period if it were determined without reference to subsection (4) and if no input tax credits were claimed, and no amounts were deducted, in determining that net tax, and
 - (b) the amount required under subsection (4) to be added in determining the net tax for the period;
- "designated reporting period".—"designated reporting period" of a person means a reporting period of the person in respect of which a designation under subsection (2) is in effect, but does not include a reporting period in which the person ceases to be a registrant.
- (2) **Designation by Minister.**—The Minister may, on the application of a registrant and by notice in writing, designate, as an eligible reporting period for the purposes of this section, a particular reporting period (other than a fiscal year) of the registrant specified in the application and ending in a fiscal year of the registrant if
 - (a) the Minister is satisfied that it can reasonably be expected that the cumulative amount for the particular reporting period will not exceed \$1000;
 - (b) the registrant's application in respect of the particular reporting period is made in prescribed form, contains prescribed information and is filed with the Minister in prescribed manner before the beginning of the particular reporting period; and
 - (c) at the time the application is made,
 - (i) no designation under this subsection of a reporting period of the registrant ending in the fiscal year has been revoked,
 - (ii) all amounts required under this Part to be remitted before that time by the registrant in respect of reporting periods of the registrant or supplies of real property made to the registrant and all amounts payable under this Part before that time by the registrant as penalty, interest, an instalment of tax or a repayment in respect of reporting periods of the registrant have been remitted or paid,
 - (iii) all amounts required under this Act (other than this Part), the *Customs Act*, the *Customs Tariff*, the *Excise Act*, the *Income Tax Act*, sections 21 and 33 of the *Canada Pension Plan* and section 53 and Part VII of the *Unemployment Insurance Act* to be remitted or paid before that time by the registrant have been remitted or paid, and

- (iv) all returns required under this Part to be filed with the Minister before that time by the registrant have been filed.
- (3) **No return.**—Subject to section 282, a registrant is not required to file a return under section 238 for a designated reporting period of the registrant if the cumulative amount for the period does not exceed \$1000.
- (4) **Determination of net tax.**—Where the cumulative amount for a designated reporting period of a registrant does not exceed \$1000, that amount
 - (a) shall be added in determining the registrant's net tax for the reporting period of the registrant immediately following the designated reporting period; and
 - (b) notwithstanding any other provision of this Part, shall not be included in determining the registrant's net tax for the designated reporting period.
- (5) **Revocation by Minister.**—Where the Minister has made a designation under subsection (2) in respect of a reporting period of a registrant and
 - (a) the condition described in paragraph (2)(a) is no longer met in respect of the period, or
 - (b) the conditions described in paragraph (2)(c) would not be met if an application for such a designation were made at the beginning of the period,

the Minister may revoke the designation.

- (6) **Notice of revocation.**—Where, under subsection (5), the Minister revokes a designation of a reporting period of a registrant, the Minister shall send a notice in writing of the revocation to the registrant.
 - (7) Automatic revocation.—Where
 - (a) a registrant files, or is required to file, a return under section 238 or 282 for a designated reporting period of the registrant ending in a fiscal year of the registrant, or
 - (b) the Minister revokes a designation of a reporting period of a registrant ending in a fiscal year of the registrant,

the designations under subsection (2) of all subsequent reporting periods of the registrant ending in the fiscal year are revoked.

- (8) **Filing deadlines.**—In this Part (other than this section), any reference to the day on or before which a person is required to file a return shall, where the person is, because of subsection (3), not required to file the return, be read as a reference to the day on or before which the person would, but for that subsection, be required to file the return. S.C. 1994, c. 9, s. 16.
- 239. (1) Authority for separate returns.—A registrant who engages in one or more commercial activities in separate branches or divisions may file with the Minister in prescribed manner an application, in prescribed form containing prescribed information, for authority to file separate returns under this Division in respect of a branch or division specified in the application.
- (2) **Authorization by Minister.**—Where the Minister receives an application under subsection (1) in respect of a branch or division of a registrant and is satisfied that
 - (a) the branch or division can be separately identified by reference to the location thereof or the nature of the activities engaged in by it, and
 - (b) separate records, books of account and accounting systems are maintained in respect of the branch or division.

the Minister may, in writing, authorize the registrant to file separate returns in relation to the specified branch or division, subject to such conditions as the Minister may at any time impose.

- (3) **Revocation of authorization.**—The Minister may, in writing, revoke an authorization granted under subsection (2) where
 - (a) the registrant fails to comply with any condition attached thereto or any provision of this Part;
 - (b) the Minister considers that the authorization is no longer required for the purposes for which it was originally granted, or generally for the purposes of this Part:
 - (c) the Minister is no longer satisfied that the requirements of paragraphs (2)(a) and (b) in respect of the registrant are met; or
 - (d) the registrant, in writing, requests the Minister to revoke the authorization.
- (4) **Notice of revocation.**—Where under subsection (3) the Minister revokes an authorization, the Minister shall send a notice in writing of the revocation to the registrant and shall specify therein the effective date thereof. S.C. 1990, c. 45, s. 12.

Subdivision d. Registration

- **240.** (1) **Registration required.**—Every person who makes a taxable supply in Canada in the course of a commercial activity engaged in by the person in Canada is required to be registered for the purposes of this Part, except where
 - (a) the person is a small supplier;
 - (b) the only commercial activity of the person is the making of supplies of real property by way of sale otherwise than in the course of a business; or
 - (c) the person is a non-resident person who does not carry on any business in Canada.
- (1.1) **Taxi business.**—Notwithstanding subsection (1), every small supplier who carries on a taxi business is required to be registered for the purposes of this Part in respect of that business.
- (2) **Non-resident performers, etc.**—Every person who enters Canada for the purpose of making taxable supplies of admissions in respect of a place of amusement, a seminar, an activity or an event is required to be registered for the purposes of this Part and shall, before making any such supply, apply to the Minister for registration.
- (2.1) **Application.**—A person required under subsection (1) or (1.1) to be registered shall apply to the Minister for registration before the day that is thirty days after
 - (a) in the case of a person required under subsection (1.1) to be registered in respect of a taxi business, the day the person first makes a taxable supply in Canada in the course of that business; and
 - (b) in any other case, the day the person first makes a taxable supply in Canada, otherwise than as a small supplier, in the course of a commercial activity engaged in by the person in Canada.
- (3) **Registration permitted.**—An application for registration for the purposes of this Part may be made to the Minister by any person who is not required under subsection (1), (1.1), (2) or (4) to be registered and who
 - (a) is engaged in a commercial activity in Canada;
 - (b) is a non-resident person who in the ordinary course of carrying on business outside

Canada regularly solicits orders for the supply of tangible personal property for delivery in Canada:

- (c) is a listed financial institution resident in Canada; or
- (d) is a particular corporation resident in Canada
 - (i) that owns shares of the capital stock of, or holds indebtedness of, any other corporation that is related to the particular corporation, or
 - (ii) that is acquiring, or proposes to acquire, all or substantially all of the issued and outstanding shares of the capital stock of another corporation, having full voting rights under all circumstances,

where all or substantially all of the property of the other corporation is, for the purposes of section 186, property that was acquired or imported by the other corporation for consumption, use or supply exclusively in the course of its commercial activities.

- (3.1) Extended registration permitted for taxi business.—Where a person who is a small supplier carrying on a taxi business files with the Minister in prescribed manner a request, in prescribed form containing prescribed information, to have the registration of the person apply in respect of all commercial activities engaged in by the person in Canada, the Minister may approve the request and shall thereupon notify the person in writing of the date from which the registration so applies.
- (4) Suppliers of prescribed property.—Every person (other than a small supplier), whether or not resident in Canada, who, in Canada, whether through an employee or agent or by means of advertising directed at the Canadian market, solicits orders for the supply by the person of, or offers to supply, property that is prescribed property for the purposes of section 143.1 and that is to be sent by mail or courier to the recipient at an address in Canada
 - (a) shall be deemed, for the purposes of this Part, to be carrying on business in Canada; and
 - (b) is required to be registered for the purposes of this Part.
- (5) Form and contents of application.—An application for registration shall be made in prescribed form containing prescribed information and shall be filed with the Minister in prescribed manner.
- (6) Security.—Every non-resident person who does not have a permanent establishment in Canada and who applies or is required to be registered for the purposes of this Part shall give and thereafter maintain security, in an amount and a form satisfactory to the Minister, that the person will collect and remit tax as required by this Division. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 100.
- **241.** (1) **Registration.**—The Minister may register any person applying therefor and shall thereupon assign a registration number to the person and notify the person in writing of the registration number and the effective date of the registration.
- (2) **Taxi business.**—Where, on the day on which the registration under subsection (1) of a person becomes effective or is varied under subsection 242(2.1), the person is a small supplier carrying on a taxi business and an approval under subsection 240(3.1) in respect of the registration does not become effective on that day, the registration does not apply to any other commercial activity engaged in by the person in Canada throughout the period commencing on that day and ending on the earlier of the first day thereafter that the person ceases to be a small supplier and the day, specified in a notice issued under subsection 240(3.1) in respect of that registration or varied registration, as the case may be, from which the registration is to apply to

- all commercial activities engaged in by the person in Canada. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 101.
- **242.** (1) **Cancellation.** —The Minister may, after giving a person who is registered under this Subdivision reasonable written notice, cancel the registration of the person if the Minister is satisfied that the registration is not required for the purposes of this Part.
- (2) **Request for cancellation.**—The Minister shall cancel the registration of a person who is not carrying on a taxi business, effective after the last day of a fiscal year of the person, where
 - (a) the person is a small supplier and has filed with the Minister in prescribed manner a request, in prescribed form containing prescribed information, to do so; and
 - (b) the person has been registered for a period of not less than one year ending on that day.
- (2.1) **Request for variation.**—Where a small supplier carrying on a taxi business files with the Minister in prescribed manner a request, in prescribed form containing prescribed information, to have the registration of the person varied to apply only to that business, the Minister shall so vary the registration, effective on a day that is the first day of a fiscal year of the person and that is at least one year after the registration of the person last became applicable to all commercial activities engaged in by the person in Canada.
- (2.2) **Request for cancellation.**—Where at any time that an approval granted under subsection 178.2(3) in respect of a direct seller is in effect, an independent sales contractor (within the meaning assigned by section 178.1) of the direct seller would be a small supplier if the approval had been in effect at all times before that time and the contractor files with the Minister in prescribed manner a request, in prescribed form containing prescribed information, to have the registration of the contractor cancelled, the Minister shall cancel the registration of the contractor.
- (3) **Notice of cancellation or variation.**—Where the Minister cancels or varies the registration of a person, the Minister shall notify the person in writing of the cancellation or variation and the effective date thereof. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 102.

Subdivision e. Fiscal periods and reporting periods

Fiscal Periods

- **243.** (1) **Determination of fiscal quarters.** —For the purposes of this Part, the fiscal quarters in a fiscal year of a person shall be determined in accordance with the following rules:
 - (a) there shall not be more than four fiscal quarters in the year;
 - (b) the first fiscal quarter in the year shall begin on the first day of that year, and the last fiscal quarter in the year shall end on the last day of that year;
 - (c) each fiscal quarter shall be shorter than one hundred and twenty days; and
 - (d) except for the first and last fiscal quarters in the year, each fiscal quarter shall be longer than eighty-three days.
- (2) **Determination of fiscal months.**—For the purposes of this Part, the fiscal months in a fiscal year of a person shall be determined in accordance with the following rules:
 - (a) the first fiscal month in each fiscal quarter in the year shall begin on the first day of that fiscal quarter, and the last fiscal month in each fiscal quarter shall end on the last day of that fiscal quarter;

- (b) each fiscal month shall be shorter than thirty-six days except that the Minister may, on request in writing made in prescribed form containing prescribed information and filed with the Minister in prescribed manner, allow the person to have one fiscal month that is longer than thirty-five days in a fiscal quarter; and
- (c) each fiscal month shall be longer than twenty-seven days unless
 - (i) that fiscal month is the first or last fiscal month in a fiscal quarter, or
 - (ii) the Minister, on request in writing made in prescribed form containing prescribed information and filed with the Minister in prescribed manner, allows the person to have that fiscal month shorter than twenty-eight days.
- (3) **Notice by registrant.**—Where a person is a registrant at any time in a fiscal year of the person, the person shall specify the first and last day of each of the fiscal quarters and fiscal months in the year in prescribed form containing prescribed information and filed with the Minister in prescribed manner on or before the day that is
 - (a) where the person becomes a registrant in that fiscal year, the later of
 - (i) the day the person files an application for registration under section 240 or, where the person was required under subsection 240(2.1) to file that application on or before an earlier day, that earlier day, and
 - (ii) the effective date of the registration; and
 - (b) in any other case, the first day of that fiscal year.
- (4) **Determination by Minister.**—Where a person fails to determine the fiscal quarters or fiscal months in a fiscal year of the person in accordance with subsection (1) or (2), or fails to satisfy the requirements of subsection (3), for the purposes of this Part, the Minister may determine those fiscal quarters or fiscal months and shall notify the person in writing of the determination. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 103.
- **244.** (1) **Election for fiscal year.**—Where the taxation year of a person is not a calendar year, the person may elect to have fiscal years that are calendar years, effective on the first day of a calendar year.
- (2) **Idem.**—Where the taxation year of an individual or a trust is not a period that is, for the purposes of the *Income Tax Act*, the fiscal period of a business carried on by the individual or trust, or by a partnership of which the individual or trust is a member, the individual or trust may elect to have the fiscal year of the individual or trust be that fiscal period, effective on the first day of one of those fiscal periods.
- (3) **Revocation of election.**—A person who has made an election under this section may revoke the election, effective on the first day of a taxation year of the person that begins more than one year after the day the election became effective.
- (4) Form and contents of election, etc.—An election made under this section or a revocation of an election made under this section shall
 - (a) be made in prescribed form containing prescribed information;
 - (b) specify the day the election or revocation is to become effective; and
 - (c) be filed with the Minister not later than the day the election or revocation is to become effective. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 104.

Reporting Periods

245. (1) Reporting period of non-registrant.—Subject to sections 246, 247 and 251,

- (a) the reporting period of a person who is neither a registrant nor a listed financial institution is a calendar month; and
- (b) the reporting period of a listed financial institution that is not a registrant is the fiscal year of the institution.
- (2) **Reporting period of registrant.**—Subject to subsection 248(3) and section 251, the reporting period of a registrant at a particular time in a fiscal year of the registrant is

(a) where

- (i) the registrant has made an election under section 248 that is effective at that time, or
- (ii) the registrant has not made an election under section 246 or 247 that is effective at that time, an election under section 248 by the registrant would be effective at that time if the registrant had made such an election at the beginning of the fiscal year of the registrant that includes that time and, except where the reporting period of the registrant that includes that time is deemed under subsection 251(1) to be a separate reporting period, the last reporting period of the registrant ending before that time was a fiscal year of the registrant,

the fiscal year of the registrant that includes that time;

(b) where

- (i) the threshold amount of the registrant for the fiscal year or fiscal quarter of the registrant that includes that time exceeds \$6,000,000 and the registrant is not a listed financial institution described in any of subparagraphs 149(1)(a)(i) to (x),
- (ii) the last reporting period of the registrant ending before that time was the fiscal month of the registrant and the registrant has not made an election under section 247 or 248 that is effective at that time, or
- (iii) the registrant has made an election under section 246 that is effective at that time, the fiscal month of the registrant that includes that time;
- (c) where the registrant is a listed financial institution described in any of subparagraphs 149(1)(a)(i) to (x) and has not made an election under section 246 or 247, the fiscal year of the registrant that includes that time; and
- (d) in all other cases, the fiscal quarter of the registrant that includes that time. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 105; S.C. 1994, c. 9, s. 17.
- **246.** (1) **Election for fiscal months.**—Any person may make an election to have reporting periods that are fiscal months of the person, to take effect
 - (a) where the person is a registrant, on the first day of a fiscal year of the person; or
 - (b) on the day the person becomes a registrant.
- (2) **Idem.**—Where a person has made an election under section 248 and the election ceases to have effect on the beginning of a fiscal quarter of the person specified in paragraph 248(2)(b), the person may make an election, to take effect on the first day of that fiscal quarter, to have reporting periods that are fiscal months of the person.
- (3) **Duration of election.** –An election made under this section by a person shall remain in effect until the beginning of the day an election by that person under section 247 or 248 takes effect. S.C. 1990, c. 45, s. 12.
- **247.** (1) **Election for fiscal quarters.**—Where the threshold amount of a person for a fiscal year does not exceed \$6,000,000, the person may make an election, to take effect on the first day of that fiscal year, to have reporting periods that are fiscal quarters of the person.

- (2) **Duration of election.**—An election made under this section by a person shall remain in effect until the earliest of
 - (a) the beginning of the day an election by the person under section 246 or 248 takes effect,
 - (b) the beginning of the first fiscal quarter of the person for which the threshold amount of the person exceeds \$6,000,000, and
 - (c) the beginning of the first fiscal year of the person for which the threshold amount of the person exceeds \$6,000,000. S.C. 1990, c. 45, s. 12.
- **248.** (1) Election for fiscal years.—Where the threshold amount for a fiscal year of a person does not exceed \$500,000, the person may make an election to have reporting periods that are fiscal years of the person, to take effect on the first day of a fiscal year of the person.
- (2) **Duration of election.**—An election made under this section by a person shall remain in effect until the earliest of
 - (a) the beginning of the day an election by the person under section 246 or 247 takes effect,
 - (b) where the threshold amount of the person for the second or third fiscal quarter of the person in a fiscal year of the person exceeds \$500,000, the beginning of the first fiscal quarter of the person for which the threshold amount exceeds that amount, and
 - (c) where the threshold amount of the person for a fiscal year of the person exceeds \$500,000, the beginning of that fiscal year.
- (3) Where election loses effect.—For the purposes of this Part, where a person has made an election under this section and the election ceases to have effect on the beginning of a fiscal quarter of the person specified in paragraph (2)(b), the period beginning on the first day of the fiscal year of the person that includes that fiscal quarter and ending immediately before the beginning of that fiscal quarter shall be deemed to be a reporting period of the person. S.C. 1990, c. 45, s. 12; S.C. 1994, c. 9, s. 18.
- **249.** (1) **Threshold amount for fiscal year.**—For the purposes of sections 245, 247 and 248, the threshold amount of a particular person for a fiscal year of the person is an amount equal to the total of
 - (a) the amount determined by the formula

$$A \times \frac{365}{B}$$

- A is the total of all consideration (other than consideration referred to in section 167.1 that is attributable to goodwill of a business) for taxable supplies (other than supplies of financial services, supplies by way of sale of real property that is capital property of the person and supplies included in Part V of Schedule VI) made in Canada by the person that became due to the person in the immediately preceding fiscal year (in this subsection referred to as the "base year") of the person or that was paid to the person in the base year without having become due, and
- B is the number of days in the base year, and
- (b) the total of all amounts each of which is an amount in respect of a person (in this paragraph referred to as the "associate") who was associated with the particular person at

the end of the particular fiscal year of the associate that is the last such year ending at the same time as, or at any time in, the base year, determined by the formula

$$C \times \frac{365}{D}$$

- C is the total of all consideration (other than consideration referred to in section 167.1 that is attributable to goodwill of a business) for taxable supplies (other than supplies of financial services, supplies by way of sale of real property that is capital property of the associate and supplies included in Part V of Schedule VI) made in Canada by the associate that became due to the associate in the particular fiscal year of the associate or that was paid to the associate in that year without having become due, and
- D is the number of days in the particular fiscal year of the associate.
- (2) **Threshold amount for fiscal quarter.**—For the purposes of sections 245, 247 and 248, the threshold amount of a particular person for a particular fiscal quarter of the person at any time in a fiscal year of the person is an amount equal to the total of
 - (a) the total of all consideration for taxable supplies (other than supplies of financial services, supplies by way of sale of real property that is capital property of the person and supplies included in Part V of Schedule VI) made in Canada by the person that became due to the person in the preceding fiscal quarters of the person ending in that year or that was paid to the person in those preceding fiscal quarters without having become due, and
 - (b) the total of all amounts each of which is an amount in respect of a person (in this paragraph referred to as the "associate") who was associated with the particular person at the beginning of the particular fiscal quarter equal to the total of all consideration for taxable supplies (other than supplies of financial services, supplies by way of sale of real property that is capital property of the associate and supplies included in Part V of Schedule VI), made in Canada by the associate that became due to the associate in the fiscal quarters of the associate that end in the fiscal year of the particular person before the beginning of the particular fiscal quarter or that was paid to the associate in those fiscal quarters of the associate without having become due. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 106.
- **250.** Form and filing of election.—An election made under section 246, 247 or 248 by a person shall
 - (a) be made in prescribed form containing prescribed information;
 - (b) be filed with the Minister in prescribed manner;
 - (c) specify the first fiscal year in respect of which it applies; and
 - (d) be filed
 - (i) where the election is to take effect on the day the person becomes a registrant, at the time the person applies to be registered under this Part or, where the effective date of the person's registration is after that time, at any time between that time and that effective date,
 - (ii) where the election is made under section 248 and the reporting period of the person ending immediately before the day the election is to take effect is a fiscal quarter of the person, within three months after that day, and
 - (iii) in all other cases, within two months after the day the election is to take effect. S.C. 1990, c. 45, s. 12.

- **251.** (1) [Reporting period] On becoming registrant.—For the purposes of this Part, where a person becomes a registrant on a particular day,
 - (a) the period beginning on the first day of the calendar month that includes the particular day and ending on the day immediately preceding the particular day, and
 - (b) the period beginning on the particular day and ending on the last day of the reporting period of the person, otherwise determined under subsection 245(2), that includes the particular day,

shall each be deemed to be a separate reporting period of the person. S.C. 1990, c. 45, s. 12.

- (2) [Reporting period] On ceasing to be registrant.—For the purposes of this Part, where a person ceases to be a registrant on a particular day,
 - (a) the period beginning on the first day of the reporting period of the person, otherwise determined under subsection 245(2), that includes the particular day and ending on the day immediately preceding the particular day, and
 - (b) the period beginning on the particular day and ending on the last day of the calendar month that includes the particular day,

shall each be deemed to be a separate reporting period of the person. S.C. 1990, c. 45, s. 12.

DIVISION VI

Rebates

- **252.** (1) **Non-resident rebate in respect of exported goods.**—Where a non-resident person is the recipient of a supply of tangible personal property acquired by the person for use primarily outside Canada, other than
 - (a) used specified tangible personal property acquired by the person by way of purchase for consideration that exceeds the prescribed amount in respect of the property,
 - (b) excisable goods,
 - (c) wine, and
 - (d) gasoline, diesel fuel or other motive fuel, other than such fuel that
 - (i) is being transported in a vehicle designed for transporting gasoline, diesel fuel or other motive fuel in bulk, and
 - (ii) is for use otherwise than in the vehicle in which or with which it is being transported,

and the person exports the property within sixty days after it is delivered to the person, the Minister shall, subject to section 252.2, pay a rebate to the person equal to the tax paid by the person in respect of the supply.

- (2) **Rebate for artistic works produced for export.**—Where a non-resident person who is not a registrant
 - (a) acquires particular property or a particular service (other than a service of storing or shipping property) for consumption or use exclusively in the manufacture or production of an original literary, musical, artistic, motion picture or other work in which copyright protection subsists and copies, if any, of that work,
 - (b) is not a consumer of the particular property or service, and

- (c) is manufacturing or producing the work and all copies of it for export by the non-resident person,
- the Minister shall, subject to subsection (3) and section 252.2, pay a rebate to the non-resident person equal to the tax paid by the non-resident person in respect of the acquisition of the particular property or service.
- (3) **Assignment of rebate.**—Where the recipient of a supply assigns, in prescribed form containing prescribed information, to the supplier the right to a rebate under subsection (2) to which the recipient would be entitled in respect of the supply if the recipient paid the tax in respect of the supply and satisfied the conditions of section 252.2 and the supplier pays to, or credits in favour of, the recipient the amount of that tax,
 - (a) the supplier may claim a deduction under subsection 234(2) in respect of the supply equal to that amount; and
 - (b) the recipient is not entitled to any rebate, refund or remission of tax in respect of the supply.
 - (4)-(6) [Repealed] S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 107.
 - 252.1 (1) Definitions.—In this section and section 252.2,
- "short-term accommodation".—"short-term accommodation" includes any type of overnight shelter (other than shelter on a train, trailer, boat or structure that has means of, or is capable of being readily adapted for, self-propulsion) when supplied as part of a tour package that also includes meals, or food therefor, and the services of a guide, but does not include short-term accommodation that is included in that part of a tour package that is not the taxable portion of the tour package within the meaning of subsection 163(3):
- "tour package".—"tour package" has the meaning assigned by subsection 163(3), but does not include a tour package that includes a convention facility or related convention supplies.
 - (2) Accommodation rebate to non-resident consumers.—Where
 - (a) a non-resident person is the recipient of a supply made by a registrant of short-term accommodation or a tour package that includes short-term accommodation,
 - (b) the accommodation or tour package is acquired by the person otherwise than for use in the course of a business of the person and otherwise than for supply in the ordinary course of a business of the person of making such supplies, and
 - (c) the accommodation is made available to a non-resident consumer thereof,
- the Minister shall, subject to subsection (8) and section 252.2, pay a rebate to the person equal to the tax paid by the person in respect of the accommodation.
 - (3) Accommodation rebate to non-resident suppliers. Where
 - (a) a particular non-resident person who is not registered under Subdivision d of Division V is the recipient of a supply of short-term accommodation or a tour package that includes short-term accommodation,
 - (b) the accommodation or tour package is acquired by the person for supply in the ordinary course of a business of the person of making such supplies,
 - (c) a supply of the accommodation or tour package is made to another non-resident person and payment of the consideration for that supply is made at a place outside Canada at which the supplier, or an agent of the supplier, is conducting business, and
 - (d) the accommodation is made available to a non-resident consumer thereof.

the Minister shall, subject to subsection (8) and section 252.2, pay a rebate to the particular person equal to the tax paid by the particular person in respect of the accommodation.

(4) Tax paid in respect of accommodation.—For the purposes of subsection (2), where in an application filed by a person for rebates under that subsection in respect of one or more supplies of short-term accommodation that is not included in a tour package and in respect of which tax was paid by the person, the person elects to have any of those rebates determined in accordance with the formula set out in this subsection, the amount of tax paid in respect of each of those supplies of short-term accommodation shall be deemed to be equal to the amount determined by the formula

$A \times \$5$

where

- A is the total number of nights for which that short-term accommodation is made available under the agreement for the supply.
- (5) Tax paid in respect of tour package.—Where a person files an application in which a rebate under subsection (2) or (3) is claimed in respect of one or more supplies of tour packages that include short-term accommodation and in respect of which tax was paid by the person, for the purposes of that subsection, the amount of tax paid in respect of the accommodation shall, for each of those tour packages, be deemed to be equal to
 - (a) where subsection (2) applies and the person elects in that application to have any of those rebates determined in accordance with the formula set out in this paragraph, the amount determined by the formula

$$A \times $5$$

where

- A is the total number of nights for which short-term accommodation included in that tour package is made available under the agreement for the supply; and
- (b) in any other case, the amount determined by the formula

$$\frac{B}{C} \times \frac{D}{2}$$

- B is the total number of nights for which short-term accommodation included in that tour package is made available under the agreement for the supply of that tour package,
- C is the number of nights that are spent in Canada by the consumer of that tour package during the period commencing on the earlier of the first day on which overnight lodging included in the tour package is made available to the consumer and the first day any overnight transportation service included in the tour package is rendered to the consumer and ending on the later of the last day such lodging is made available to the consumer and the last day any such transportation service is rendered to the consumer, and
- D is the tax paid by the person in respect of the supply of that tour package.
- (6) Multiple supplies of accommodation for the same night.—For the purposes of determining a rebate under subsection (2) to a person in accordance with the formula set out in subsection (4), where a registrant makes a particular supply to the person of short-term accommodation that is made available to the person for any night, any other supply by the

registrant to the person of short-term accommodation that is made available to the person for the same night shall be deemed not to be a supply separate from the particular supply.

(7) **Idem.**—For the purposes of determining a rebate under subsection (2) to a person in accordance with the formula set out in paragraph (5)(a), where a registrant makes a supply to the person of a particular tour package that includes short-term accommodation that is made available to the person for the same night as that for which short-term accommodation included in another tour package supplied by the registrant to the person is made available, all the accommodation made available to the person for that night shall be deemed to be included in the particular tour package and not in any other tour package.

(8) Rebate paid by registrant.—Where

- (a) a registrant makes a supply of short-term accommodation or a tour package that includes short-term accommodation to a non-resident recipient who is the consumer of the accommodation or who is acquiring the accommodation or tour package for supply in the ordinary course of a business of the recipient of making such supplies,
- (b) the registrant pays to, or credits in favour of, the recipient an amount on account of a rebate under subsection (2) or (3) to which the recipient would be entitled in respect of the accommodation if the recipient had paid the tax in respect of the supply and had satisfied the conditions of section 252.2,
- (c) the amount paid or credited is equal to
 - (i) in the case of a supply of a tour package, the amount that would be determined in respect of the supply under paragraph (5)(b), and
 - (ii) in the case of a supply of short-term accommodation that is not part of a tour package, the tax paid by the recipient in respect of the supply, and
- (d) in the case of a rebate under subsection (2),
 - (i) payment of the consideration for the supply is made at a place outside Canada at which the registrant, or an agent of the registrant, is conducting business, or
 - (ii) where the accommodation is supplied as part of a tour package that includes other property or services (other than meals or property or services that are provided or rendered by the person who provides the accommodation and in connection with it), a deposit of at least 20% of the total consideration for the tour package is paid
 - (A) by the recipient to the registrant at least 14 days before the first day on which any short-term accommodation included in the tour package is made available under the agreement for the supply of the tour package, and
 - (B) by means of a credit card or charge card issued by, or a cheque, draft or other bill of exchange drawn on an account outside Canada with, a non-resident institution that is a bank, cooperative credit society, trust company or similar institution,

the registrant may claim a deduction under subsection 234(2) in respect of the amount paid or credited, and the recipient is not entitled to any rebate or to any refund or remission of tax in respect of the accommodation.

(9) **Deposit paid by credit card.** —For the purposes of subsection (8), where the payment of a deposit in respect of a supply is effected by the crediting of an account of the supplier by the issuer of a credit card or charge card of the recipient, the deposit shall be deemed not to have been paid before the account is so credited. S.C. 1993, c. 27, s. 107.

- **252.2 Restriction.**—A rebate shall not be paid under section 252 or subsection 252.1(2) or (3) to a person unless
 - (a) the person files an application for the rebate within one year after
 - (i) in the case of a rebate under subsection 252(1), the day the person exports the property to which the rebate relates,
 - (ii) in the case of a rebate under subsection 252(2), the day the tax to which the rebate relates became payable, and
 - (iii) in any other case, the last day any tax to which the rebate relates became payable;
 - (b) except where the application is a prescribed application, where the person is an individual, the individual has not made another application under this section in the calendar quarter in which the application is made;
 - (c) where the person is not an individual, the person has not made another application under this section in the calendar month in which the application is made;
 - (d) at the time the application is made, the person is non-resident;
 - (e) the total of all rebates for which the application is made is at least \$7;
 - (f) the total of all rebates for which the application is made that are in respect of short-term accommodation not included in a tour package and that are determined in accordance with the formula set out in subsection 252.1(4) does not exceed \$75; and
 - (g) the total of all rebates for which the application is made that are in respect of tour packages and that are determined in accordance with the formula set out in paragraph 252.1(5)(a) does not exceed \$75. S.C. 1993, c. 27, s. 107.
- **252.3 Rebate for non-resident exhibitors.**—Where a non-resident person who is not registered under Subdivision d of Division V is the recipient of a supply by way of lease, licence or similar arrangement of real property that is acquired by the person exclusively for use as a site for the promotion, at a convention, of property or services supplied by, or a business of, the person, the Minister shall, on the application of the person filed within one year after the day the convention ends, pay to the person
 - (a) a rebate equal to the tax paid by the person in respect of that supply; and
 - (b) a rebate equal to the tax paid by the person in respect of a supply to the person of related convention supplies in respect of the convention. S.C. 1993, c. 27, s. 107.
- **252.4** (1) **Rebate in respect of foreign convention.**—Where a sponsor of a foreign convention pays tax in respect of
 - (a) a supply of property or services relating to the convention made by a registrant who is the organizer of the convention.
 - (b) a supply, made by a registrant who is not the organizer of the convention, of property or services that are acquired for consumption, use or supply by the sponsor as related convention supplies or of the convention facility, or
 - (c) property or services that are imported by the sponsor for consumption, use or supply by the sponsor as related convention supplies,

the Minister shall, subject to subsection (2) and on the application of the sponsor filed within one year after the day the convention ends, pay a rebate to the sponsor equal to

(d) in the case of a supply made by the organizer, the tax paid by the sponsor calculated on that part of the consideration for the supply that is reasonably attributable to the convention facility or related convention supplies, and

- (e) in any other case, the tax paid by the sponsor in respect of the supply or importation.
- (2) **Rebate paid by organizer.** —Where a registrant who is the organizer of a foreign convention pays to, or credits in favour of, the sponsor of the convention an amount on account of a rebate under subsection (1) to which the sponsor would be entitled in respect of a supply made by the registrant to the sponsor if the sponsor had paid the tax in respect of the supply and had applied for the rebate in accordance with that subsection, the registrant may claim a deduction under subsection 234(2) in respect of the amount paid or credited, and the sponsor is not entitled to any rebate, refund or remission in respect of the tax to which the amount relates.
- (3) **Rebate to organizer.**—Where an organizer of a foreign convention who is not registered under Subdivision d of Division V pays tax in respect of a supply or importation of the convention facility or related convention supplies, the Minister shall, on the application of the organizer filed within one year after the day the convention ends, pay a rebate to the organizer equal to the tax paid by the organizer in respect of the supply or importation.

(4) Rebate paid by supplier.—Where

- (a) a person who is
 - (i) the organizer of a foreign convention and who is not registered under Subdivision d of Division V, or
 - (ii) the sponsor of a foreign convention

is the recipient of

- (iii) a taxable supply of the convention facility, or related convention supplies, made by the operator of the facility who is not the organizer of the convention, or
- (iv) a taxable supply, made by a registrant other than the organizer of the convention, of short-term accommodation that is acquired by the person exclusively for supply in connection with the convention, and
- (b) the operator of the facility or supplier of accommodation pays to, or credits in favour of, the person an amount on account of a rebate to which the person would be entitled under subsection (1) or (3) in respect of the supply of the facility or accommodation, as the case may be, if the person had paid the tax in respect of the supply and had applied for the rebate in accordance with that subsection,

the operator or supplier of accommodation, as the case may be, may claim a deduction under subsection 234(2) in respect of the amount paid or credited, and the person is not entitled to any rebate, refund or remission in respect of the tax to which the amount relates. S.C. 1993, c. 27, s. 107.

- **252.5** Liability for amount paid or credited.—Where, under section 252, 252.1 or 252.4, a registrant at a particular time pays to, or credits in favour of, a person an amount on account of a rebate and
 - (a) the person does not satisfy the condition (in this section referred to as the "eligibility condition") that the person would have been entitled to the rebate if the person had paid the tax to which the amount relates and had satisfied the conditions of section 252.2 or, in the case of a rebate under subsection 252.4(1), had applied for the rebate within the time limited by that subsection for filing an application for the rebate, or
 - (b) the amount paid or credited exceeds the rebate to which the person would have been so entitled, which excess is referred to in this section as the "excess amount",

the following rules apply:

- (c) where, at the particular time, the registrant knows or ought to know that the person does not satisfy the eligibility condition or that the amount paid or credited exceeds the rebate to which the person is entitled, the registrant and the person are jointly and severally liable to pay to the Receiver General under section 264 the amount or excess amount, as the case may be, as if it had been paid at the particular time as a rebate under this Division to the registrant and the person, and
- (d) in any other case, the person is liable to pay to the Receiver General under section 264 the amount or excess amount, as the case may be, as if it had been paid at the particular time to the person as a rebate under this Division. S.C. 1993, c. 27, s. 107.

253. (1) Employees and partners.—Where

- (a) an individual who is a member of a partnership that is a registrant or who is an employee of a registrant (other than a listed financial institution) acquires or imports
 - (i) a musical instrument, motor vehicle or aircraft, or
 - (ii) any other property or a service,
- (b) tax is payable by the individual in respect of the acquisition or importation, and
- (c) in the case of an acquisition or importation of a musical instrument, the individual is not entitled to claim an input tax credit in respect of the instrument,

the Minister shall, subject to subsections (2) and (3), pay a rebate in respect of the property or service to the individual for each calendar year equal to the amount determined by the formula

$A \times B$

where

A is the tax fraction on the last day of the year, and B is an amount equal to

- (a) the capital cost allowance in respect of the instrument, vehicle or aircraft,
- (b) the amount in respect of the acquisition and importation of the other property imported by the individual (not exceeding the total of the value of that property determined under section 215 and the tax calculated on it), or
- (c) the amount in respect of
 - (i) the supply by way of lease, licence or similar arrangement of the instrument, vehicle or aircraft.
 - (ii) the supply of the service, or
 - (iii) the supply in Canada of the other property,

as the case may be, that was deducted under the *Income Tax Act* in computing the individual's income for the year from an office or employment or from the partnership, as the case may be, and in respect of which the individual did not receive an allowance from a person, other than an allowance in respect of which the person certifies, in prescribed form containing prescribed information, that, at the time the allowance was paid, the person did not consider

- (d) the allowance to be a reasonable allowance for the purposes of subparagraph 6(1)(b)(v), (vi), (vii) or (vii,1) of that Act, or
- (e) where that person is a partnership of which the individual is a member, that the allowance would be a reasonable allowance for the purposes of subparagraph 6(1)(b)(v),

- (vi), (vii) or (vii.1) of that Act if the individual were an employee of that partnership at that time.
- (2) **Restriction on rebate to partner.**—The rebate in respect of property or a service payable under subsection (1) for a calendar year to an individual who is a member of a partnership shall not exceed the amount that would be an input tax credit of the partnership in respect of the property or service for the last reporting period of the partnership in its last fiscal year ending in that calendar year if
 - (a) in the case of a musical instrument that is capital property of the individual, the partnership had, in that reporting period,
 - (i) acquired the instrument by way of lease exclusively for use in activities of the partnership and for use in commercial activities thereof to the same extent that the individual's consumption or use of the instrument during that calendar year in activities of the partnership was in commercial activities thereof, and
 - (ii) paid tax in respect of the instrument equal to the tax fraction of the capital cost allowance in respect of that instrument that was deductible under the *Income Tax Act* in computing the individual's income from the partnership for that calendar year;
 - (b) in the case of a motor vehicle or aircraft that is capital property of the individual,
 - (i) the partnership had acquired the vehicle or aircraft in that reporting period in circumstances in which subsection 202(4) applies and had used the vehicle or aircraft during that last fiscal year of the partnership in commercial activities of the partnership to the same extent that the individual's use of the vehicle or aircraft during that calendar year in activities of the partnership was in commercial activities thereof, and
 - (ii) the capital cost allowance deductible in respect of that vehicle or aircraft under the *Income Tax Act* in computing the individual's income from the partnership for that calendar year were the capital cost allowance so deductible in computing the income of the partnership for that last fiscal year of the partnership; and
 - (c) in any other case, the partnership had
 - (i) acquired the property or service exclusively for use in activities of the partnership and for use in commercial activities thereof to the same extent that the individual's consumption or use of the property or service during that calendar year in activities of the partnership was in commercial activities thereof, and
 - (ii) paid, in that reporting period, tax in respect of that acquisition equal to the tax fraction of
 - (A) in the case of property imported by the individual, the amount (not exceeding the total of the value of the property determined under section 215 and the tax calculated on it) in respect of the acquisition and importation of the property by the individual that was deductible under the *Income Tax Act* in computing the individual's income from the partnership for that calendar year, and
 - (B) in any other case, the amount in respect of the acquisition of the property or service by the individual that was so deductible in computing that income.
- (3) **Application for rebate.** A rebate for a calendar year shall not be paid under subsection (1) to an individual unless, within four years after the end of the year, the individual files an application for the rebate in prescribed form containing prescribed information with the Minister with a return of the individual's income under Part I of the *Income Lax Act*.

- (4) One application for any year.—An individual shall not make more than one application under this section for a calendar year.
- (5) **Administration of rebates.**—Where an individual files an application for a rebate under this section,
 - (a) subsections 160.1(1), 164(3), (3.1) and (4) of the *Income Tax Act* apply, with such modifications as the circumstances require, for the purposes of calculating interest on the rebate or any overpayment of the rebate as if the rebate or the overpayment were a refund of tax paid under Part I of that Act or an overpayment of such a refund, as the case may be, and, for those purposes, subsection 280(1) does not apply to the rebate; and
 - (b) sections 165 to 167 and Division J of Part I of the *Income Tax Act* apply, with such modifications as the circumstances require, to objections to and appeals from an assessment of the amount of the rebate as if it were an assessment of tax payable under Part I of that Act, and sections 301 to 311 do not apply to the assessment. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 108.
 - 254. (1) Definitions.—In this section.
- "relation".—"relation" of a particular individual means another individual who is related to the particular individual or who is a former spouse of the particular individual;
- "single unit residential complex".—"single unit residential complex" includes a multiple unit residential complex that does not contain more than two residential units.
 - (2) New housing rebate.—Where
 - (a) a builder of a single unit residential complex or a residential condominium unit makes a taxable supply by way of sale of the complex or unit to a particular individual,
 - (b) at the time the particular individual becomes liable or assumes liability under an agreement of purchase and sale of the complex or unit entered into between the builder and the particular individual, the particular individual is acquiring the complex or unit for use as the primary place of residence of the particular individual or a relation of the particular individual,
 - (c) the total (in this subsection referred to as the "total consideration") of all amounts, each of which is the consideration payable for the supply to the particular individual of the complex or unit or for any other taxable supply to the particular individual of an interest in the complex or unit, is less than \$450,000,
 - (d) the particular individual has paid all of the tax under Division II payable in respect of the supply of the complex or unit and in respect of any other supply to the individual of an interest in the complex or unit (the total of which tax is referred to in this subsection as the "total tax paid by the particular individual"),
 - (e) ownership of the complex or unit is transferred to the particular individual after the construction or substantial renovation thereof is substantially completed,
 - (f) after the construction or substantial renovation is substantially completed and before possession of the complex or unit is given to the particular individual under the agreement of purchase and sale of the complex or unit
 - (i) in the case of a single unit residential complex, the complex was not occupied by any individual as a place of residence or lodging, and
 - (ii) in the case of a residential condominium unit, the unit was not occupied by an individual as a place of residence or lodging unless, throughout the time the complex or unit was so occupied, it was occupied as a place of residence by an individual, or a

relation of an individual, who was at the time of that occupancy a purchaser of the unit under an agreement of purchase and sale of the unit, and

(g) either

- (i) the first individual to occupy the complex or unit as a place of residence at any time after substantial completion of the construction or renovation is
 - (A) in the case of a single unit residential complex, the particular individual or a relation of the particular individual, and
 - (B) in the case of a residential condominium unit, an individual, or a relation of an individual, who was at that time a purchaser of the unit under an agreement of purchase and sale of the unit, or
- (ii) the particular individual makes an exempt supply by way of sale of the complex or unit and ownership thereof is transferred to the recipient of the supply before the complex or unit is occupied by any individual as a place of residence or lodging,

the Minister shall, subject to subsection (3), pay a rebate to the particular individual equal to

- (h) where the total consideration is not more than \$350,000, an amount equal to the lesser of \$8,750 and 36% of the total tax paid by the particular individual, and
- (i) where the total consideration is more than \$350,000 but less than \$450,000, the amount determined by the formula

$$A \times \frac{(\$450,000 - B)}{\$100,000}$$

where

A is the lesser of \$8,750 and 36% of the total tax paid by the particular individual, and **B** is the total consideration.

(3) **Application for rebate.**—A rebate shall not be paid in respect of a residential complex or residential condominium unit under subsection (2) to an individual unless the individual has filed an application for the rebate within four years after the day ownership of the complex or unit was transferred to the individual.

(4) Application to builder.—Where

- (a) the builder of a single unit residential complex or a residential condominium unit has made a taxable supply of the complex or unit by way of sale to an individual and has transferred ownership of the complex or unit to the individual under the agreement for the supply,
- (b) tax under Division II has been paid, or is payable, by the individual in respect of the supply,
- (c) the individual, within four years after the day ownership of the complex or unit was transferred to the individual under the agreement for the supply, submits to the builder in prescribed manner an application in prescribed form containing prescribed information for the rebate to which the individual would be entitled under subsection (2) in respect of the complex or unit if the individual applied therefor within the time allowed for such an application,
- (d) the builder agrees to pay or credit to or in favour of the individual any rebate under this section that is payable to the individual in respect of the complex, and
- (e) the tax payable in respect of the supply has not been paid at the time the individual

submits an application to the builder for the rebate and, if the individual had paid the tax and made application for the rebate, the rebate would have been payable to the individual under subsection (2),

the builder may pay or credit the amount of the rebate, if any, to or in favour of the individual.

- (5) Forwarding of application by builder.—Notwithstanding subsections (2) and (3), where an application of an individual for a rebate under this section in respect of a single unit residential complex or a residential condominium unit is submitted under subsection (4) to the builder of the complex or unit,
 - (a) the builder shall transmit the application to the Minister with the builder's return filed under Division V for the reporting period in which the rebate was paid or credited; and
 - (b) interest under subsection 297(4) is not payable in respect of the rebate.
- (6) **Joint and several liability.**—Where the builder of a single unit residential complex or a residential condominium unit pays or credits a rebate to or in favour of an individual under subsection (4) and the builder knows or ought to know that the individual is not entitled to the rebate or that the amount paid or credited exceeds the rebate to which the individual is entitled, the builder and the individual are jointly and severally liable to pay the amount of the rebate or excess to the Receiver General under section 264. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 109.

254.1 (1) Definitions.—In this section,

- "long term lease".—"long term lease", in respect of land, means a lease of the land that has a term of at least twenty years or a lease that contains an option to purchase the land;
- "relation".—"relation" of a particular individual means another individual who is related to the particular individual or who is a former spouse of the particular individual;
- "single unit residential complex".—"single unit residential complex" includes a multiple unit residential complex that does not contain more than two residential units.
 - (2) New housing rebate for building only.—Where
 - (a) under an agreement entered into between a builder of a single unit residential complex and a particular individual, the builder makes an exempt supply to the particular individual
 - (i) by way of a long term lease of, or by way of an assignment of a long term lease of, the land attributable to the complex, and
 - (ii) by way of sale of the building or part thereof in which the residential unit forming part of the complex is situated,
 - (b) at the time the particular individual becomes liable or assumes liability under the agreement, the particular individual is acquiring the complex for use as the primary place of residence of the particular individual or of a relation of the particular individual,
 - (c) the fair market value of the complex, at the time possession of the complex is given to the particular individual under the agreement, is less than \$481,500,
 - (d) the builder is deemed under subsection 191(1) to have made a supply of the complex as a consequence of giving possession of the complex to the particular individual under the agreement,
 - (e) possession of the complex is given to the particular individual after the construction or substantial renovation of it is substantially completed,
 - (f) after the construction or substantial renovation is substantially completed and before

possession of the complex is given to the particular individual under the agreement, the complex was not occupied by any individual as a place of residence or lodging, and

(g) either

- (i) the first individual to occupy the complex as a place of residence after substantial completion of the construction or substantial renovation is the particular individual or a relation of the particular individual, or
- (ii) the particular individual makes an exempt supply by way of sale or assignment of the whole of the particular individual's interest in the complex and possession of the complex is transferred to the recipient of the supply before the complex is occupied by any individual as a place of residence or lodging,

the Minister shall, subject to subsection (3), pay a rebate to the particular individual equal to

- (h) where the fair market value referred to in paragraph (c) is not more than \$374,500, an amount equal to the lesser of \$8,750 and 2.34% of the total (in this subsection referred to as the "total consideration") of all amounts each of which is the consideration payable by the particular individual to the builder for the supply by way of sale to the particular individual of the building or part of a building referred to in paragraph (a) or of any other structure that forms part of the complex, other than consideration that can reasonably be regarded as rent for the supply of the land attributable to the complex or as consideration for the supply of an option to purchase that land, and
- (i) where the fair market value referred to in paragraph (c) is more than \$374,500 but less than \$481,500, the amount determined by the formula

$$A \times \frac{(\$481,500 - B)}{\$107,000}$$

where

A is the lesser of \$8,750 and 2.34% of the total consideration, and

- B is the fair market value referred to in paragraph (c).
- (3) Application for rebate. —A rebate shall not be paid in respect of a residential complex under subsection (2) to an individual unless the individual has filed an application for the rebate within four years after the day possession of the complex was transferred to the individual

(4) Application to builder.—Where

- (a) the builder of a single unit residential complex makes a supply of the complex to an individual under an agreement referred to in paragraph (2)(a) and transfers possession of the complex to the individual under the agreement,
- (b) the individual, within four years after the day possession of the complex is transferred to the individual under the agreement for the supply, submits to the builder in prescribed manner an application in prescribed form containing prescribed information for the rebate to which the individual would be entitled under subsection (2) in respect of the complex if the individual applied for it within the time allowed for such an application, and
- (c) the builder agrees to pay to, or credit in favour of, the individual any rebate under this section that is payable to the individual in respect of the complex,

the builder may pay to, or credit in favour of, the individual the amount of the rebate, if any.

(5) Forwarding of application by builder. - Notwithstanding subsections (2) and (3),

where an application of an individual for a rebate under this section in respect of a residential complex is submitted under subsection (4) to the builder of the complex,

- (a) the builder shall transmit the application to the Minister with the builder's return filed under Division V for the reporting period in which the rebate was paid or credited; and
- (b) interest under subsection 297(4) is not payable in respect of the rebate.
- (6) **Joint and several liability.**—Where the builder of a residential complex pays or credits a rebate under subsection (4) and the builder knows or ought to know that the individual is not entitled to the rebate or that the amount paid or credited exceeds the rebate to which the individual is entitled, the builder and the individual are jointly and severally liable to pay the amount of the rebate or excess to the Receiver General under section 264. S.C. 1993, c. 27, s. 110.
- **255.** (1) **Meaning of "relation".**—In this section, "relation" of a particular individual means another individual who is related to the particular individual or who is a former spouse of the particular individual.
 - (2) Cooperative housing rebate.—Where
 - (a) a cooperative housing corporation has paid tax in respect of a taxable supply to the corporation of a residential complex,
 - (b) the corporation makes a supply of a share of the capital stock of the corporation to a particular individual and transfers ownership of the share to the particular individual,
 - (c) at the time the particular individual becomes liable or assumes liability under an agreement of purchase and sale of the share entered into between the corporation and the particular individual, the particular individual is acquiring the share for the purpose of using a residential unit in the complex as the primary place of residence of the particular individual or a relation of the particular individual,
 - (d) the total (in this subsection referred to as the "total consideration") of all amounts, each of which is the consideration payable for the supply to the particular individual of the share or an interest in the corporation, complex or unit, is less than \$481,500,
 - (e) after the construction or substantial renovation of the complex is substantially completed and before possession of the unit is given to the particular individual as an incidence of ownership of the share, the unit was not occupied by any individual as a place of residence or lodging, and
 - (f) either
 - (i) the first individual to occupy the unit as a place of residence after possession of the unit is given to the particular individual is the particular individual or a relation of the particular individual, or
 - (ii) the particular individual makes a supply by way of sale of the share and ownership of the share is transferred to the recipient of that supply before the unit is occupied by any individual as a place of residence or lodging,

the Minister shall, subject to subsection (3), pay a rebate to the particular individual equal to

- (g) where the total consideration is not more than \$374,500, an amount equal to the lesser of \$8,750 and 2.34% of the total consideration, and
- (h) where the total consideration is more than \$374,500 but less than \$481,500, the amount determined by the formula

$$A \times \frac{(\$481,500 - B)}{\$107,000}$$

where

A is the lesser of \$8,750 and 2.34% of the total consideration, and

B is the total consideration.

- (3) **Application for rebate.**—A rebate shall not be paid in respect of a share of the capital stock of a cooperative housing corporation under subsection (2) to an individual unless the individual files an application for the rebate within four years after the day ownership of the share was transferred to the individual. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 111
 - 256. (1) Definitions.—In this section,
- "relation".—"relation" of a particular individual means another individual who is related to the particular individual or who is a former spouse of the particular individual;
- "single unit residential complex".—"single unit residential complex" includes a multiple unit residential complex that does not contain more than two residential units.
 - (2) Rebate for owner-built homes.—Where
 - (a) a particular individual constructs or substantially renovates, or engages another person to construct or substantially renovate for the particular individual, a single unit residential complex for use as the primary place of residence of the particular individual or a relation of the particular individual,
 - (b) the fair market value of the complex, at the time the construction or substantial renovation thereof is substantially completed, is less than \$450,000,
 - (c) the particular individual has paid tax under Division II in respect of the supply by way of sale to the individual of the land that forms part of the complex or an interest therein or in respect of the supply to the individual of any improvement thereto (the total of which tax is referred to in this subsection as the "total tax paid by the particular individual"),
 - (d) either
 - (i) the first individual to occupy the complex after the construction or substantial renovation is begun is the particular individual or a relation of the particular individual, or
 - (ii) the particular individual makes an exempt supply by way of sale of the complex and ownership of the complex is transferred to the recipient before the complex is occupied by any individual as a place of residence or lodging,
- the Minister shall, subject to subsection (3), pay a rebate to the particular individual equal to
 - (e) where the fair market value referred to in paragraph (b) is not more than \$350,000, the lesser of \$8,750 and 36% of the total tax paid by the particular individual before an application for the rebate is filed with the Minister in accordance with subsection (3), and
 - (f) where the fair market value referred to in paragraph (b) is more than \$350,000 but less than \$450,000, the amount determined by the formula

$$A \times \frac{(\$450,000 - B)}{\$100,000}$$

- A is the lesser of \$8,750 and 36% of the total tax paid by the particular individual before an application for the rebate is filed with the Minister in accordance with subsection (3), and
- B is the fair market value of the complex referred to in paragraph (b).

- (2.1) Purchase of new mobile home.—For the purposes of this section, where
- (a) a particular individual receives a supply by way of sale of a mobile home that has never been used or occupied by any individual as a place of residence or lodging and does not file with the Minister, or submit to the supplier, an application for a rebate in respect of the home under section 254 or 254.1.
- (b) the particular individual is acquiring the mobile home for use as the primary place of residence of the particular individual or of a relation of the particular individual, and
- (c) the first individual to occupy the mobile home at any time is the particular individual or a relation referred to in paragraph (b), or the particular individual at any time transfers ownership of the home under an agreement for an exempt supply by way of sale of the home,

the particular individual shall be deemed to have constructed the mobile home and to have substantially completed the construction immediately before the earlier of the times referred to in paragraph (c).

- (3) **Application for rebate.**—A rebate shall not be paid under subsection (2) in respect of a residential complex to an individual unless the individual files an application for the rebate within two years after the earlier of
 - (a) the day the complex is first occupied as described in subparagraph (2)(d)(i) or ownership is transferred as described in subparagraph (2)(d)(ii), and
 - (b) the day construction or substantial renovation of the complex is substantially completed. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 112.
- **256.1** (1) **Rebate to owner of land leased for residential purposes.**—Where an exempt supply of land described by section 6.1 of Part I of Schedule V is made to a particular lessee who is acquiring the land for the purpose of making a supply of property that includes the land
 - (a) that is an exempt supply described by paragraph 6(a) or 7(a) or (b) of Part I of Schedule V, other than an exempt supply described by paragraph 7(a) of that Part made to a person described in subparagraph (ii) thereof, and
 - (b) that will result in the particular lessee being deemed under any of subsections 190(3) to (5) and section 191 to have made a supply of the property at a particular time,

the Minister shall, subject to subsection (2), pay a rebate, to each person (in this subsection referred to as the "landlord") who is an owner or lessee of the land and who is not the particular lessee, equal to the amount determined by the formula

A - B

- A is the total (in this subsection referred to as the "total tax charged in respect of the land") of the tax that was or would, but for section 167, have been payable by the landlord in respect of the last acquisition of the land by the landlord and the tax that was payable by the landlord in respect of improvements to the land acquired or imported by the landlord after the land was last so acquired, and
- B is the total of all other rebates and input tax credits that the landlord was entitled to claim in respect of any tax included in the total tax charged in respect of the property.
- (2) **Application for rebate.**—A rebate shall not be paid under subsection (1) to an owner or lessee of land in respect of a supply of the land made to a person who will be deemed under any of subsections 190(3) to (5) and section 191 to have made on a particular day another

supply of the property that includes the land, unless the owner or lessee, as the case may be, files an application for the rebate before the day that is four years after the particular day. S.C. 1993, c. 27, s. 113.

257. (1) Non-registrant sale of real property.—Where a person who is not a registrant makes a particular taxable supply of real property by way of sale, the Minister shall, subject to subsection (2), pay a rebate to the person equal to the amount determined by the formula

$A \times B$

where

A is the lesser of

- (a) the total (in this subsection referred to as the "total tax charged in respect of the property") of the tax that was payable by the person in respect of the last acquisition of the property by the person and the tax that was payable by the person in respect of improvements to the property acquired or imported by the person after the property was last so acquired, and
- (b) the tax that is or would, but for section 167, be payable in respect of the particular taxable supply, and

B is

- (a) where the person was entitled to claim a rebate under section 259 in respect of any tax included in the total tax charged in respect of the property, the difference between 100% and the percentage prescribed for the purposes of that section that was applicable in determining the amount of that rebate, and
- (b) in any other case, 100%.
- (2) **Application for rebate.**—A rebate shall not be paid under subsection (1) to a person in respect of the supply by way of sale of real property by the person unless the person files an application for the rebate within four years after the day the consideration for the supply became due or was paid without becoming due. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 114.
- **258.** (1) **Definition of "legal aid plan".**—In this section, "legal aid plan" means a legal aid plan administered under the authority of the government of a province.
- (2) **Legal aid.**—Where a person responsible for the administration of a legal aid plan in a particular province pays tax in respect of a taxable supply of legal services under a legal aid plan, the following rules apply:
 - (a) the Minister shall pay to the person a rebate equal to the amount of tax payable by the person in respect of the supply; and
 - (b) the person shall not be entitled to any other rebate in respect of tax on that supply.
- (3) **Application for rebate.**—A rebate under this section in respect of tax payable by a person shall not be paid to the person unless the person files an application for the rebate within four years after the end of the reporting period of the person in which the tax became payable. **S.C.** 1990, c. 45, s. 12.
 - 259. (1) Definitions.—In this section,
- "charity". "charity" includes a non-profit organization that operates, otherwise than for profit, a health care facility within the meaning of paragraph (c) of the definition of that expression in section 1 of Part II of Schedule V;
- "claim period".—"claim period" of a person at any time means

- (a) where the person is at that time a registrant, the reporting period of the person that includes that time, and
- (b) in any other case, the fiscal quarter of the person that includes that time;
- "municipality".—"municipality" includes a person designated by the Minister, for the purposes of this section, to be a municipality, but only in respect of activities, specified in the designation, that involve the making of supplies (other than taxable supplies) by the person of municipal services;
- "non-creditable tax charged".—"non-creditable tax charged", in respect of property or a service for a claim period of a person, means the amount, if any, by which
 - (a) the total (in this section referred to as "the total tax charged in respect of the property or service") of all amounts each of which is
 - (i) tax in respect of the supply or importation of the property or service that became payable by the person during the period or that was paid by the person during the period without having become payable (other than tax deemed to have been paid by the person or in respect of which the person is not entitled to claim an input tax credit only because of subsection 226(4)),
 - (ii) tax deemed under subsection 129(6), 129.1(4), 171(3) or 183(4), (5) or (6), section 191 or subsection 200(2) or 211(2) or (4) to have been collected during the period by the person in respect of the property or service,
 - (iii) tax, calculated on the amount of an allowance in respect of the property or service, that is deemed under section 174 to have been paid during the period by the person,
 - (iv) tax deemed under section 175 or 180 to have been paid during the period by the person in respect of the property or service, or
 - (v) an amount in respect of the property or service that is required under subsection 129(7) or paragraph 171(4)(b) to be added in determining the net tax of the person for the period,

exceeds

- (b) the total of all amounts included in the total determined under paragraph (a) that are included in determining an input tax credit of the person in respect of the property or service for the period;
- "non-profit organization".—"non-profit organization" includes a prescribed government organization;
- "percentage of government funding".—"percentage of government funding" of a person for a fiscal year of the person means the percentage determined in prescribed manner;
- "selected public service body".—"selected public service body" means
 - (a) a hospital authority,
 - (b) a school authority that is established and operated otherwise than for profit,
 - (c) a university that is established and operated otherwise than for profit,
 - (d) a public college, or
 - (e) a municipality.
- (2) **Qualifying non-profit organization.**—For the purposes of this section, a person is a qualifying non-profit organization at any time in a fiscal year of the person if, at that time, the

person is a non-profit organization and the percentage of government funding of the person for the year is at least 40%.

- (3) Rebate for persons other than designated municipalities.—Where a person (other than a listed financial institution, a registrant prescribed for the purposes of subsection 188(5) and a person designated, for the purposes of this section, to be a municipality) is, on the last day of a claim period of the person or the fiscal year of the person that includes that claim period, a selected public service body, charity or qualifying non-profit organization, the Minister shall, subject to subsection (5), pay a rebate to the person equal to the prescribed percentage of the non-creditable tax charged in respect of property or a service (other than a prescribed property or service) for the claim period.
- (4) **Rebate for designated municipalities.**—Where a person is, on the last day of a claim period of the person or of the fiscal year of the person that includes that claim period, designated, for the purposes of this section, to be a municipality in respect of activities (in this subsection referred to as "designated activities") specified in the designation, the Minister shall, subject to subsection (5), pay a rebate to the person in respect of property or a service (other than a prescribed property or service) equal to the amount determined by the formula

$A \times B$

where

A is the prescribed percentage of the total tax charged in respect of the property or service for the claim period, and

B is

- (a) where the property was acquired by way of lease, licence or similar arrangement by the person for consideration that includes two or more periodic payments that are attributable to successive parts (each of which is in this subsection referred to as a "lease interval") of the period for which possession or use of the property is provided under the arrangement and an amount calculated on such a periodic payment is included in the total tax charged in respect of the property for the claim period, the extent (expressed as a percentage) to which the person intended, at the beginning of the lease interval to which the periodic payment is attributable, to use the property in the course of the designated activities,
- (b) where the service is supplied to the person for consideration that includes two or more payments, each of which is attributable to particular services rendered under the agreement for the supply, and at a particular time during the claim period tax calculated on a particular payment becomes payable, or is paid without having become payable, by the person and is included in the total tax charged in respect of the service for the claim period, the extent (expressed as a percentage) to which the person had, before the particular time, consumed, used or supplied the particular services to which the particular payment is attributable, or intended at the particular time to consume, use or supply those particular services, in the course of the designated activities, and
- (c) in any other case, the extent (expressed as a percentage) to which the person intended, at the time the property or service was acquired or imported by the person, to consume, use or supply the property or service in the course of the designated activities.
- (5) **Application for rebate.** A rebate shall not be paid to a person under subsection (3) or (4) in respect of non-creditable tax charged for a claim period in a fiscal year of the person unless the person files an application for the rebate after the first day in the year that the person

is a selected public service body, charity or qualifying non-profit organization and within four years after the day that is

- (a) where the person is a registrant, the day on or before which the person is required to file the return under Division V for the period; and
- (b) where the person is not a registrant, the last day of the period.
- (6) **Limitation.**—Except where subsection (10) or (11) applies, a person shall not make more than one application for rebates under this section for any claim period of the person.
- (7) **Selected public service bodies.**—Where a selected public service body described in any of paragraphs (a) to (e) of the definition of that expression in subsection (1) acquires or imports property or a service primarily for consumption, use or supply in the course of activities engaged in by another person described in any other of those paragraphs, for the purpose of determining the amount of a rebate under this section to the body in respect of the non-creditable tax charged in respect of the property or service for any claim period of the body, the body shall be deemed to be engaged in those activities.
- (8) **Idem.**—Where a person acquires or imports property or a service primarily for consumption, use or supply in the course of activities engaged in by the person acting in the capacity of a selected public service body described in any of paragraphs (a) to (e) of the definition of that expression in subsection (1), the amount of any rebate under this section to the person in respect of the non-creditable tax charged in respect of the property or service for a claim period shall be determined as if the person were not a selected public service body described in any other of those paragraphs.
- (9) **Prescribed percentage.**—Notwithstanding subsection 31(4) of the *Interpretation Act*, a provision of a regulation made under this Part that prescribes a percentage for the purposes of this section shall not be repealed, amended or varied to have the effect of changing the percentage applicable to a person.
- (10) **Application by branches or divisions.**—Where a person who is entitled to a rebate under subsection (3) or (4) is engaged in one or more activities in separate branches or divisions and is authorized under subsection 239(2) to file separate returns under Division V in relation to a branch or division, the person
 - (a) shall file separate applications under this section in respect of the branch or division; and
 - (b) shall not make more than one such application in respect of the branch or division for any claim period of the person.
- (11) **Application of section 239.**—Where a person who has not made an application under section 239 is entitled to a rebate under subsection (3) or (4) and is engaged in one or more activities in separate branches or divisions,
 - (a) section 239 applies to the person as if the references therein to "commercial activities" were references to "activities", as if the references therein to "returns under this Division" and "returns" were references to "applications under section 259", and as if the references therein to "registrant" were references to "person";
 - (b) where, because of this subsection, a branch or division of the person is authorized under section 239 to file separate applications for rebates under this section, the person shall not make more than one such application in respect of the branch or division for any claim period of the person; and
 - (c) where, because of this subsection, the person is authorized under section 239 to file

separate applications for rebates under this section in relation to a branch or division and the person is required to file returns under Division V, the person shall file separate returns under that Division in respect of the branch or division.

- (12) **Election.**—A prescribed person may make an election under this subsection to determine, in accordance with prescribed rules, the rebates payable to the person under this section in respect of non-creditable tax charged in respect of property or services for claim periods during which the election is in effect.
- (13) **Time for making an election.**—An election under subsection (12) by a person is not a valid election unless it is made on or before the day the person files with the Minister the application of the person for rebates under this section in respect of non-creditable tax charged for the claim period of the person that includes the day on which the election is to take effect, which day shall be the first day of a claim period of the person.
- (14) **Revocation.**—An election made under subsection (12) by a person may be revoked by the person effective on the first day of a claim period of the person.
- (15) Cessation.—An election made under subsection (12) by a person ceases to have effect at the earlier of
 - (a) the time at which the person ceases to be a prescribed person for the purposes of that subsection, and
 - (b) the time at which a revocation of the election becomes effective.
 - (16) [Repealed] S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 115.
 - 260. (1) Charity exports.—Where a charity
 - (a) has paid tax in respect of a supply of property or a service received by the charity.
 - (b) has not claimed and is not entitled to claim an input tax credit in respect of the property or service, and
 - (c) has exported the property or service for charitable purposes outside Canada,
- subject to subsection (2), the Minister shall pay a rebate to the charity equal to the amount of tax paid in respect of the supply.
- (2) **Application for rebate.** A rebate shall not be paid under subsection (1) to a charity in respect of a supply unless the charity files an application for the rebate within four years after the end of the fiscal year of the charity in which tax in respect of the supply became payable. **S.C.** 1990, c. 45, s. 12.
 - 261. (1) Rebate of payment made in error.—Where a person has paid an amount
 - (a) as or on account of, or
 - (b) that was taken into account as,
- tax, net tax, penalty, interest or other obligation under this Part in circumstances where the amount was not payable or remittable by the person, whether the amount was paid by mistake or otherwise, the Minister shall, subject to subsections (2) and (3), pay a rebate of that amount to the person.
- (2) **Restriction.**—A rebate in respect of an amount shall not be paid under subsection (1) to a person to the extent that
 - (a) the amount was taken into account as tax or net tax for a reporting period of the person and the Minister has assessed the person for the period under section 296;

- (b) the amount paid was tax, net tax, penalty, interest or any other amount assessed under section 296; or
 - (c) a rebate of the amount is payable under subsection 215.1(1) or (2) or 216(6) or a refund of the amount is payable under section 69, 73, 74 or 76 of the *Customs Act* because of subsection 215.1(3) or 216(7).
- (3) **Application for rebate.**—A rebate in respect of an amount shall not be paid under subsection (1) to a person unless the person files an application for the rebate within four years after the amount was paid or remitted.
- (4) One application per month.—Subject to subsections (5) and (6), not more than one application for a rebate under this section may be made by a person in any calendar month.
- (5) **Application by branches and divisions.**—Where a person who is entitled to a rebate under this section is engaged in one or more activities in separate branches or divisions and is authorized under subsection 239(2) to file separate returns under Division V in relation to a branch or division.
 - (a) the person may file separate applications under this section in respect of the branch or division; and
 - (b) not more than one application for a rebate under this section in respect of the branch or division may be made by the person in any calender month.
- (6) **Application of s. 239.**—Where a person who has not made an application under section 239 is entitled to a rebate under this section and is engaged in one or more activities in separate branches or divisions,
 - (a) section 239 applies to the person as if the references therein to "commercial activities" were references to "activities", as if the references therein to "returns under this Division" and "returns" were references to "applications under section 261" and as if the references therein to "registrant" were references to "person"; and
 - (b) where, because of this subsection, the person is authorized under section 239 to file separate applications for rebates under this section in relation to a branch or division, not more than one application for a rebate under this section in respect of the branch or division may be made by the person in any calendar month. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 116.
- **262.** (1) Form and filing of application.—An application for a rebate under this Division (other than section 253) shall be made in prescribed form containing prescribed information and shall be filed with the Minister in prescribed manner.
- (2) **Single application.**—Only one application may be made under this Division for a rebate with respect to any matter.
 - (3) Group of individuals.—Where
 - (a) a supply of a single unit residential complex, a multiple unit residential complex that does not contain more than two residential units, a residential condominium unit or a share in a cooperative housing corporation is made to two or more individuals, or
 - (b) two or more individuals construct or substantially renovate, or engage another person to construct or substantially renovate, a single unit residential complex or a multiple unit residential complex that does not contain more than two residential units,

the references in sections 254 to 256 to a particular individual shall be read as references to all of those individuals as a group, but only one of those individuals may apply for the rebate under

section 254, 254.1, 255 or 256, as the case may be, in respect of the complex, unit or share. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 117.

- **263.** Restriction on rebate.—A rebate of an amount under subsection 215.1(1) or (2) or 216(6) or any of sections 252 to 261 or a refund of an amount that, because of subsection 215.1(3) or 216(7), is payable under section 69, 73, 74 or 76 of the *Customs Act*, shall not be paid to a person to the extent that it can reasonably be regarded that
 - (a) the amount has previously been rebated, refunded or remitted to that person under this or any other Act of Parliament;
 - (b) the person has claimed or is entitled to claim an input tax credit in respect of the amount; or
 - (c) the person has obtained or is entitled to obtain a rebate, refund or remission of the amount under any other section of this Act or under any other Act of Parliament. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 118.
- **263.1 Idem.**—Where a trustee is appointed under the *Bankruptcy and Insolvency Act* to act in the administration of the estate of a bankrupt, a rebate under this Part that the bankrupt was entitled to claim before the appointment shall not be paid to the bankrupt after the appointment unless all returns required under this Part to be filed for, or in respect of acquisitions of real property made in, reporting periods of the bankrupt ending before the appointment have been filed and all amounts required under this Part to be remitted by the bankrupt and all amounts payable under this Part by the bankrupt as penalty, interest, an instalment or a repayment in respect of those reporting periods have been remitted or paid, as the case may be. S.C. 1993, c. 27, s. 119.
- **264.** (1) **Overpayment of rebate or interest.**—Where an amount is paid to, or applied to a liability of, a person as a rebate under section 215.1, subsection 216(6) or this Division (other than section 253) or as interest under section 297 and the person is not entitled to the rebate or interest, as the case may be, or the amount paid or applied exceeds the rebate or interest, as the case may be, to which the person is entitled, the person shall pay to the Receiver General an amount equal to the rebate, interest or excess, as the case may be, on the day the amount is paid to, or applied to a liability of, the person.
- (2) **Effect of reduction of rebate.**—For the purposes of subsection (1), to the extent that a rebate has been paid to a person in excess of the amount to which the person was entitled and the amount of the excess has, by reason of section 263, reduced the amount of any other rebate to which the person would, but for the payment of the excess, be entitled, the person shall be deemed to have paid the amount of the excess to the Receiver General. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 120.

DIVISION VII

Miscellaneous

Subdivision a. Trustees, receivers and personal representatives

- **265.** (1) **Bankruptcies.**—For the purposes of this Part, where on a particular day a person becomes a bankrupt,
 - (a) the trustee in bankruptcy shall be deemed to be the agent of the bankrupt and any supply made or received and any act performed by the trustee in the administration of the estate of the bankrupt or in the carrying on of any business of the bankrupt shall be

deemed to have been made, received or performed, as the case may be, by the trustee as agent on behalf of the bankrupt;

- (b) the estate of the bankrupt shall be deemed not to be a trust or an estate;
- (c) the property and money of the person immediately before the particular day shall be deemed not to pass to and be vested in the trustee in bankruptcy on the receiving order being made or the assignment in bankruptcy being filed but to remain vested in the bankrupt;
- (d) the trustee in bankruptcy, and not the person, is liable for the payment or remittance of all amounts (other than amounts that relate solely to activities in which the person begins to engage on or after the particular day and to which the bankruptcy does not relate) that become payable or remittable by the person under this Part during the period beginning on the day immediately after the day the trustee became the trustee in bankruptcy of the person and ending on the day the discharge of the trustee is granted under the *Bankruptcy and Insolvency Act*, except that
 - (i) the trustee is liable for the payment or remittance of amounts that became payable or remittable by the person after the particular day in respect of periods that ended on or before the particular day, or of amounts that became payable or remittable by the person after the particular day in respect of supplies of real property made to the person on or before the particular day, only to the extent of the property and money of the person in possession of the trustee available to satisfy the liability,
 - (ii) the trustee is not liable for the payment or remittance of any amount for which a receiver (within the meaning assigned by subsection 266(1)) is liable under section 266, and
 - (iii) the payment or remittance by the person of an amount in respect of the liability shall discharge the liability of the trustee to the extent of that amount;
- (e) where, on the particular day the person is registered under Subdivision d of Division V, the registration continues in relation to the activities of the person to which the bankruptcy relates as though the trustee in bankruptcy were the registrant in respect of those activities and ceases to apply to the activities of the person in which the person begins to engage on or after the particular day and to which the bankruptcy does not relate;
- (f) where, on or after the particular day the person begins to engage in particular activities to which the bankruptcy does not relate, the particular activities shall be deemed to be separate from the activities of the person to which the bankruptcy relates as though the particular activities were activities of a separate person, and the person may
 - (i) apply for, and be granted, registration under Subdivision d of Division V, and
 - (ii) establish fiscal periods and establish and make elections respecting reporting periods,

in relation to the particular activities as though they were the only activities of the person;

- (g) the reporting periods of the person begin and end on the days on which they would have begun and ended if the bankruptcy had not occurred, except that
 - (i) the reporting period of the person during which the person becomes a bankrupt shall end on the particular day and a new reporting period of the person in relation to the activities of the person to which the bankruptcy relates shall begin on the day immediately after the particular day, and
 - (ii) the reporting period of the person, in relation to the activities of the person to which

the bankruptcy relates, during which the trustee in bankruptcy is discharged under the *Bankruptcy and Insolvency Act* shall end on the day the discharge is granted;

- (h) subject to paragraph (j), the trustee in bankruptcy shall file with the Minister in prescribed form containing prescribed information all returns in respect of
 - (i) the activities of the person to which the bankruptcy relates for, or
 - (ii) supplies of real property to which the bankruptcy relates and that are made to the person in,

reporting periods of the person ending in the period beginning on the day immediately after the particular day and ending on the day the discharge of the trustee is granted under the *Bankruptcy and Insolvency Act* and that are required under this Part to be filed by the person, as if those activities were the only activities of the person;

- (i) subject to paragraph (j), if the person has not on or before the particular day filed a return required under this Part to be filed by the person for, or in respect of a supply of real property made to the person in, a reporting period of the person ending
 - (i) on or before the particular day, and
 - (ii) in, or immediately before, the fiscal year of the person that included the particular day,

the trustee in bankruptcy shall, unless the Minister waives in writing the requirement for the trustee to file the return, file with the Minister in prescribed form containing prescribed information a return for that reporting period of the person or in respect of that supply, as the case may be;

- (j) where there is a receiver (within the meaning assigned by subsection 266(1)) with authority in respect of a business, a property, affairs or assets of the person, the trustee in bankruptcy is not required
 - (i) to include in any return any information that the receiver is required under section 266 to include in a return, or
 - (ii) to file a return in respect of any supply of real property made to the person in respect of which the receiver is required under section 266 to file a return; and
- (k) the property and money held by the trustee in bankruptcy for the person on the day an order of absolute discharge of the person is granted under the *Bankruptcy and Insolvency Act* shall be deemed not to pass to the person on the order being granted but to have been held by and vested in the person continuously since the day it was acquired by the person or the trustee, as the case may be.
- (2) **Definitions.**—In this section, "bankrupt" and "estate of the bankrupt" have the same meanings as in the *Bankruptcy and Insolvency Act.* S.C. 1990, c. 45, s. 12; S.C. 1992, c. 27, s. 90(1)(p); S.C. 1993, c. 27, s. 121.
 - **266.** (1) **Definitions.**—In this section,
- "business".—"business" includes a part of a business;
- "receiver".-- "receiver" means a person who
 - (a) under the authority of a debenture, bond or other debt security, of a court order or of an Act of Parliament or of the legislature of a province, is empowered to operate or manage a business or a property of another person,
 - (b) is appointed by a trustee under a trust deed in respect of a debt security to exercise the

authority of the trustee to manage or operate a business or a property of the debtor under the debt security,

- (c) is appointed by a bank to act as agent of the bank in the exercise of the authority of the bank under subsection 426(3) of the *Bank Act* in respect of property of another person,
- (d) is appointed as a liquidator to liquidate the assets of a corporation or to wind up the affairs of a corporation, or
- (e) is appointed as a committee, guardian or curator with authority to manage and care for the affairs and assets of an individual who is incapable of managing those affairs and assets,

and includes a person who is appointed to exercise the authority of a creditor under a debenture, bond or other debt security to operate or manage a business or a property of another person but, where a person is appointed to exercise the authority of a creditor under a debenture, bond or other debt security to operate or manage a business or a property of another person, does not include that creditor;

"relevant assets".—"relevant assets" of a receiver means

- (a) where the receiver's authority relates to all the properties, businesses, affairs and assets of a person, all those properties, businesses, affairs and assets, and
- (b) where the receiver's authority relates to only part of the properties, businesses, affairs or assets of a person, that part of the properties, businesses, affairs or assets, as the case may be.
- (2) **Receivers.**—For the purposes of this Part, where on a particular day a receiver is vested with authority to manage, operate, liquidate, or wind up any business or property, or to manage and care for the affairs and assets, of a person,
 - (a) the receiver shall be deemed to be an agent of the person and any supply made or received and any act performed by the receiver in respect of the relevant assets of the receiver shall be deemed to have been made, received or performed, as the case may be, by the receiver as agent on behalf of the person;
 - (b) the receiver shall be deemed not to be a trustee of the estate of the person or any part of the estate of the person;
 - (c) where the relevant assets of the receiver are a part and not all of the person's businesses, properties, affairs or assets, the relevant assets of the receiver shall be deemed to be, throughout the period during which the receiver is acting as receiver of the person, separate from the remainder of the businesses, properties, affairs or assets of the person as though the relevant assets were businesses, properties, affairs or assets, as the case may be, of a separate person;
 - (d) the person and the receiver are jointly and severally liable for the payment or remittance of all amounts that become payable or remittable by the person under this Part before or during the period during which the receiver is acting as receiver of the person to the extent that the amounts can reasonably be considered to relate to the relevant assets of the receiver or to the businesses, properties, affairs or assets of the person that would have been the relevant assets of the receiver if the receiver had been acting as receiver of the person at the time the amounts became payable or remittable, as the case may be, except that
 - (i) the receiver is liable for the payment or remittance of amounts that became payable

or remittable before that period only to the extent of the property and money of the person in possession or under the control and management of the receiver after

- (A) satisfying the claims of creditors whose claims ranked, on the particular day, in priority to the claim of the Crown in respect of the amounts, and
- (B) paying any amounts that the receiver is required to pay to a trustee in bankruptcy of the person,
- (ii) the person is not liable for the remittance of any tax collected or collectible by the receiver, and
- (iii) the payment or remittance by the person or the receiver of an amount in respect of the liability shall discharge the joint liability to the extent of that amount;
- (e) the reporting periods of the person begin and end on the days on which they would have begun and ended if the vesting had not occurred, except that
 - (i) the reporting period of the person, in relation to the relevant assets of the receiver, during which the receiver begins to act as receiver of the person, shall end on the particular day and a new reporting period of the person in relation to the relevant assets shall begin on the day immediately after the particular day, and
 - (ii) the reporting period of the person, in relation to the relevant assets, during which the receiver ceases to act as receiver of the person, shall end on the day the receiver ceases to act as receiver of the person;
- (f) the receiver shall file with the Minister in prescribed form containing prescribed information all returns in respect of the relevant assets of the receiver for, or in respect of supplies of real property that can reasonably be considered to relate to the relevant assets and that were made to the person in, reporting periods ending in the period during which the receiver is acting as receiver and that are required under this Part to be made by the person, as if the relevant assets were the only properties, businesses, affairs and assets of the person;
- (g) if the person has not on or before the particular day filed a return required under this Part to be filed by the person for a reporting period of the person ending
 - (i) on or before the particular day, and
 - (ii) in, or immediately before, the fiscal year of the person that included the particular day,

the receiver shall, unless the Minister waives in writing the requirement for the receiver to file the return, file with the Minister in prescribed form containing prescribed information a return for that reporting period that relates to the businesses, properties, affairs or assets of the person that would have been the relevant assets of the receiver if the receiver had been acting as receiver of the person during that reporting period; and

- (h) if the person has not on or before the particular day filed a return required under this Part to be filed by the person in respect of a supply of real property made to the person in a reporting period of the person ending
 - (i) on or before the particular day, and
 - (ii) in, or immediately before, the fiscal year of the person that included the particular day,

and that can reasonably be considered to relate to the businesses, properties, affairs or assets of the person that would have been the relevant assets of the receiver if the receiver

had been acting as receiver of the person during that reporting period, the receiver shall, unless the Minister waives in writing the requirement for the receiver to file the return, file with the Minister in prescribed form containing prescribed information a return in respect of the supply. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 122.

- **267.** (1) **Personal representatives.**—For the purposes of this Part, where at any time an individual dies,
 - (a) the passing of the property of the deceased to the executor of the deceased and the vesting of that property in the executor shall be deemed to be a supply of that property made for no consideration;
 - (b) for the purpose of applying the provisions of this Part in respect of property of the deceased that becomes vested in the executor, the executor shall be deemed to have paid any tax paid by the deceased in respect of the property and to have claimed any input tax credit claimed by the deceased in respect of the property;
 - (c) the executor shall be deemed to use the property of the deceased immediately after that time in the same way and for the same purposes as the deceased used the property immediately before that time;
 - (d) where immediately before that time the deceased was engaged in a commercial activity, the executor shall be deemed to be engaged in that activity immediately after that time; and
 - (e) where immediately before that time the deceased was a registrant, the executor shall be deemed to be a registrant immediately after that time.
- (2) **Meaning of "executor".**—In this section, "executor" of an individual means the executor of the will of the individual, the administrator of the estate of the individual or any other person who is responsible under the appropriate law for the proper collection, administration and disposition of the property of the individual, for the payment of the debts of the individual to the extent of the proceeds of the disposition of that property and for the distribution of the property of the estate of the individual among the beneficiaries of the estate. S.C. 1990, c. 45, s. 12.
- **268.** *Inter vivos* **trust.**—For the purposes of this Part, where a person settles property on an *inter vivos* trust (within the meaning of the *Income Tax Act*),
 - (a) the person shall be deemed to have made and the trust shall be deemed to have received a supply by way of sale and purchase of the property; and
 - (b) the supply shall be deemed to have been made for consideration equal to the amount determined under the *Income Tax Act* to be the proceeds of the disposition of the property. S.C. 1990, c. 45, s. 12.
- **269.** Distribution by trust.—For the purposes of this Part, subject to sections 265 to 267, where a trustee of a trust distributes property of the trust to beneficiaries of the trust, the distribution of the property shall be deemed to be a supply of the property made by the trust for consideration equal to the amount determined under the *Income Tax Act* to be the proceeds of the disposition of the property. S.C. 1990, c. 45, s. 12.
 - **270.** (1) **Definitions.**—In this section,
- "receiver".—"receiver" means a person who is a receiver within the meaning assigned by subsection 266(1);
- "representative".—"representative" means
 - (a) a person, other than a trustee in bankruptcy or a receiver, who is administering,

winding up, controlling or otherwise dealing with any property, business, commercial activity or estate of a registrant, and

- (b) an executor, within the meaning assigned by subsection 267(2), of an individual who is a registrant.
- (2) Certificates for receivers.—Every receiver shall, before distributing to any person any property or money under the control of the receiver in the receiver's capacity as receiver, obtain a certificate from the Minister certifying that all amounts that are, or can reasonably be expected to become, payable or remittable under this Part by the receiver in that capacity in respect of the reporting period during which the distribution is made, or any previous reporting period, have been paid or that security for the payment or remittance of the amounts has, in accordance with this Part, been accepted by the Minister.
- (3) Certificates for representatives. —Every representative of a registrant shall, before distributing to any person any property or money under the control of the representative in the representative's capacity as the representative, obtain a certificate from the Minister certifying that
 - (a) all amounts that are payable or remittable by the registrant under this Part in respect of the reporting period during which the distribution is made, or any previous reporting period, and
 - (b) all amounts that are, or can reasonably be expected to become, payable or remittable under this Part by the representative in that capacity in respect of the reporting period during which the distribution is made, or any previous reporting period,

have been paid or that security for the payment or remittance of the amounts has, in accordance with this Part, been accepted by the Minister.

- (4) Liability for failure to obtain certificate.—Any
- (a) receiver who distributes property or money without obtaining a certificate as required by subsection (2) in respect of the amounts referred to in that subsection, or
- (b) representative who distributes property or money without obtaining a certificate as required by subsection (3) in respect of the amounts referred to in that subsection

is personally liable for the payment or remittance of those amounts to the extent of the value of the property or money so distributed, S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 123.

Subdivision b. Amalgamation, winding-up and joint ventures

- 271. Amalgamations.—Where two or more corporations (each of which is referred to in this section as a "predecessor") are merged or amalgamated to form one corporation (in this section referred to as the "new corporation"), otherwise than as the result of the acquisition of property of one corporation by another corporation pursuant to the purchase of the property by the other corporation or as the result of the distribution of the property to the other corporation on the winding-up of the corporation,
 - (a) except as otherwise provided in this Part, the new corporation shall, for the purposes of this Part, be deemed to be a separate person from each of the predecessors:
 - (b) for the purposes of applying the provisions of this Part in respect of property or a service acquired or imported by a predecessor, for the purposes of sections 231 and 249, and for prescribed purposes, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor; and
 - (c) for the purposes of this Part, the transfer of any property by a predecessor to the new

corporation as a consequence of the merger or amalgamation shall be deemed not to be a supply. S.C. 1990, c. 45, s. 12.

- **272. Winding-up.**—Where at any time a particular corporation is wound up and not less than 90% of the issued shares of each class of the capital stock of the particular corporation were, immediately before that time, owned by another corporation,
 - (a) for the purposes of applying the provisions of this Part in respect of property or a service acquired or imported by the other corporation as a consequence of the winding-up, for the purposes of sections 231 and 249, and for prescribed purposes, the other corporation shall be deemed to be the same corporation as, and a continuation of, the particular corporation; and
 - (b) for the purposes of this Part, the transfer of any property to the other corporation as a consequence of the winding-up shall be deemed not to be a supply. S.C. 1990, c. 45, s. 12.
- 273. (1) Joint venture election.—Where a registrant (in this section referred to as the "operator") is a participant in a joint venture (other than a partnership) under an agreement, evidenced in writing, with another person (in this section referred to as the "co-venturer") for the exploration or exploitation of mineral deposits or for a prescribed activity, and the operator and the co-venturer jointly make an election under this subsection,
 - (a) all properties and services that are, during the period the election is in effect, supplied, acquired or imported under the agreement by the operator on behalf of the co-venturer in the course of the activities for which the agreement was entered into shall, for the purposes of this Part, be deemed to be supplied, acquired or imported, as the case may be, by the operator and not by the co-venturer;
 - (b) section 177 does not apply in respect of a supply referred to in paragraph (a); and
 - (c) all supplies of property or services made, during the period the election is in effect, under the agreement by the operator to the co-venturer shall, for the purposes of this Part, be deemed not to be supplies to the extent that the property or services are, but for this section, acquired by the co-venturer for consumption, use or supply in the course of commercial activities for which the agreement was entered into.
- (1.1) Exception.—Paragraph (1)(a) does not apply to the acquisition or importation of property or a service by an operator on behalf of a co-venturer where the property or service is so acquired or imported for consumption, use or supply in the course of activities that are not commercial activities and the operator
 - (a) is a government other than a specified Crown agent; or
 - (b) would not be required, because of an Act of Parliament other than this Act, to pay tax in respect of the acquisition or importation of the property or service if the operator acquired or imported the property or service for that purpose otherwise than on behalf of the co-venturer.
- (2) Assignee of interest in joint venture.—For the purposes of this section, where a particular person has made an election under this section with respect to a joint venture and at any time during the period the election is in effect another person becomes a participant in the venture by acquiring an interest in it from the particular person, the other person shall be deemed to have made, at that time, an election under this section in accordance with subsection (4) with respect to the venture jointly with the operator of the venture.
- (3) **Revocation.**—An operator and a co-venturer who have jointly made an election under this section may jointly revoke the election.

- (4) **Form of election or revocation.**—An election or revocation under this section made jointly by an operator and a co-venturer is not a valid election or revocation unless it is made in prescribed form containing prescribed information and specifies the effective date of the election or revocation.
- (5) **Joint and several liability.**—Where a registrant and another person make, or purport to make, an election under subsection (1) in respect of an agreement between the registrant and the person, the registrant and the other person are jointly and severally liable for all obligations under this Part that result from the activities for which the agreement was entered into and that are or would be, but for this section, engaged in by the registrant on behalf of the other person.
- (6) **Joint venture beginning before 1991.**—Where an operator who is a participant in a joint venture (other than a partnership) under an agreement referred to in subsection (1) entered into before 1991 with a co-venturer files a return for the operator's first reporting period beginning after 1990 in which all properties and services supplied, acquired or imported by the operator on behalf of the co-venturer in the course of the activities for which the agreement was entered into are reported as having been supplied, acquired or imported, as the case may be, by the operator and not by the co-venturer, the operator shall be deemed to have made jointly with the co-venturer an election under this section in accordance with subsection (4).
- (7) **Application of subsection (6).**—Subsection (6) applies as between an operator and a co-venturer, in respect of an agreement, only where
 - (a) the operator sends a notice in writing to the co-venturer not later than December 31, 1990 of the operator's intention to file a return for the operator's first reporting period beginning after 1990 reporting on the basis provided in subsection (6) with respect to all property and services supplied, acquired or imported by the operator on behalf of the coventurer in the course of the activities for which the agreement was entered into; and
 - (b) the co-venturer has not, on or before the day that is the earlier of February 1, 1991 and the day that is 30 days after receipt of the notice from the operator, advised the operator in writing that all property and services supplied, acquired or imported by the operator on the co-venturer's behalf in the course of the activities for which the agreement was entered into are not to be treated as having been supplied, acquired or imported by the operator. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 124.

Subdivision c. Anti-avoidance

274. (1) Definitions.—In this section,

- "tax benefit".—"tax benefit" means a reduction, an avoidance or a deferral of tax or other amount payable under this Part or an increase in a refund or rebate of tax or other amount under this Part;
- "tax consequences".—"tax consequences" to a person means the amount of tax, net tax, input tax credit, rebate or other amount payable by, or refundable to, the person under this Part, or any other amount that is relevant to the purposes of computing that amount;
- "transaction".—"transaction" includes an arrangement or event.
- (2) General anti-avoidance provision.—Where a transaction is an avoidance transaction, the tax consequences to a person shall be determined as is reasonable in the circumstances in order to deny a tax benefit that, but for this section, would result, directly or indirectly, from that transaction or from a series of transactions that include that transaction.
 - (3) Avoidance transaction.—An avoidance transaction means any transaction

- (a) that, but for this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than to obtain the tax benefit; or
- (b) that is part of a series of transactions, which series, but for this section, would result directly or indirectly in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than to obtain the tax benefit.
- (4) **Provision not applicable.**—For greater certainty, subsection (2) does not apply in respect of a transaction where it may reasonably be considered that the transaction would not result, directly or indirectly, in a misuse of the provisions of this Part or in an abuse having regard to the provisions of this Part (other than this section) read as a whole.
- (5) **Determination of tax consequences.**—Without restricting the generality of subsection (2),
 - (a) any input tax credit or any deduction in computing tax or net tax payable may be allowed or disallowed, in whole or in part,
 - (b) any such credit or deduction or a part thereof may be allocated to any person,
 - (c) the nature of any payment or other amount may be recharacterized, and
 - (d) the tax effects that would otherwise result from the application of other provisions of this Part may be ignored,

in determining the tax consequences to a person as is reasonable in the circumstances in order to deny a tax benefit that would, but for this section, result, directly or indirectly, from an avoidance transaction.

- (6) Request for adjustments.—Where, with respect to a transaction, a notice of assessment, reassessment or additional assessment involving the application of subsection (2) with respect to the transaction has been sent to a person, any person (other than a person to whom such a notice has been sent) shall be entitled, within one hundred and eighty days after the day of mailing of the notice, to request in writing that the Minister make an assessment, a reassessment or an additional assessment, applying subsection (2) with respect to that transaction.
- (7) **Exception.**—Notwithstanding any other provision of this Part, the tax consequences to any person following the application of this section shall only be determined through a notice of assessment, reassessment or additional assessment involving the application of this section.
- (8) **Duties of Minister.**—On receipt of a request by a person under subsection (6), the Minister shall, with all due dispatch, consider the request and, notwithstanding subsections 298(1) and (2), assess, reassess or make an additional assessment with respect to the person, except that an assessment, a reassessment or an additional assessment may be made under this subsection only to the extent that it may reasonably be regarded as relating to the transaction referred to in subsection (6). S.C. 1990, c. 45, s. 12.

DIVISION VIII

Administration and Enforcement

Subdivision a. Administration

275. (1) Minister's duty.—The Minister shall administer and enforce this Part and

control and supervise all persons employed or engaged to carry out or enforce this Part and the Deputy Minister may exercise all the powers and perform the duties of the Minister under this Part.

- (2) Officers and employees.—Such officers, agents and employees as are necessary to administer and enforce this Part shall be appointed or employed in the manner authorized by law.
- (3) **Delegation of powers.**—The Minister may authorize a designated officer or agent or a class of officers or agents to exercise powers or perform duties of the Minister under this Part.
- (4) Administration of oaths.—Any officer or employee employed in connection with the administration or enforcement of this Part, if designated by the Minister for the purpose, may administer oaths and take and receive affidavits, declarations and affirmations for the purposes of or incidental to the administration or enforcement of this Part or regulations made under this Part, and every officer or employee so designated has for those purposes all the powers of a commissioner for administering oaths or taking affidavits. S.C. 1990, c. 45, s. 12; S.C. 1994, c. 9, s. 19.
- **276.** (1) **Inquiry.**—The Minister may, for any purpose related to the administration or **enforcement** of this Part, authorize any person, whether or not the person is an officer of the Department, to make such inquiry as the Minister may deem necessary with reference to anything relating to the administration or enforcement of this Part.
- (2) **Appointment of hearing officer.**—Where the Minister, under subsection (1), authorizes a person to make an inquiry, the Minister shall forthwith apply to the Tax Court for an order appointing a hearing officer before whom the inquiry will be held.
- (3) **Powers of hearing officer.**—For the purposes of an inquiry authorized under subsection (1), a hearing officer appointed under subsection (2) in relation thereto has all the powers conferred on a commissioner by sections 4 and 5 of the *Inquiries Act* and that may be conferred on a commissioner under section 11 of that Act.
- (4) When powers to be exercised.—A hearing officer appointed under subsection (2) in relation to an inquiry shall exercise the powers conferred on a commissioner by section 4 of the *Inquiries Act* in relation to such persons as the person authorized to make the inquiry considers appropriate for the conduct thereof, but the hearing officer shall not exercise the power to punish any person unless, on application by the hearing officer, a judge of a superior or county court certifies that the power may be exercised in the matter disclosed in the application and the applicant has given to the person in respect of whom the power is proposed to be exercised twenty-four hours notice of the hearing of the application, or such shorter notice as the judge considers reasonable.
- (5) **Rights of witnesses.**—Any person who gives evidence in an inquiry authorized under subsection (1) is entitled to be represented by counsel and, on request made by the person to the Minister, to receive a transcript of that evidence.
- (6) Rights of person investigated. —Any person whose affairs are investigated in the course of an inquiry authorized under subsection (1) is entitled to be present and to be represented by counsel throughout the inquiry unless the hearing officer appointed under subsection (2), on application by the Minister or a person giving evidence, orders otherwise in relation to the whole or any part of the inquiry, on the ground that the presence of the person and the person's counsel, or either of them, would be prejudicial to the effective conduct of the inquiry, S.C. 1990, c. 45, s. 12.
 - 277. (1) Regulations. The Governor in Council may make regulations

- (a) prescribing anything that, by this Part, is to be prescribed or is to be determined or regulated by regulation;
- (b) requiring any class of persons to make returns respecting any class of information required in connection with the administration of this Part;
- (c) requiring any person to provide any information, including the person's name, address and registration number, to any class of persons required to make a return containing that information;
- (d) requiring any person to provide the Minister with the person's Social Insurance Number;
- (e) requiring a person who is, by a regulation made under paragraph (b), required to make a return to supply a copy of the return or of a prescribed part thereof to the person to whom the return or part relates;
- (f) providing for the retention by way of deduction or set-off of the amount of a person's indebtedness under this Part out of any amount or amounts that may be or become payable by Her Majesty in right of Canada to the person in respect of salary or wages; and
- (g) generally to carry out the purposes and provisions of this Part.
- (2) **Effect.**—A regulation made under this Part shall have effect from the date it is published in the *Canada Gazette* or at such time thereafter as may be specified in the regulation, unless the regulation provides otherwise and
 - (a) has a relieving effect only;
 - (b) corrects an ambiguous or deficient enactment that was not in accordance with the objects of this Part or the regulations made under this Part;
 - (c) is consequential on an amendment to this Part that is applicable before the date the regulation is published in the *Canada Gazette*; or
 - (d) gives effect to a budgetary or other public announcement, in which case the regulation shall not, except where paragraph (a), (b) or (c) applies, have effect before the date the announcement was made. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 125.

Subdivision b. Returns, penalties and interest

- **278.** (1) **Place of filing.**—Every person who is required under this Part to file a return shall file the return with the Minister in the prescribed manner.
- (2) **Place of payment.**—Every person who is required under this Part to pay or remit an amount shall, except where the amount is required under section 221 to be collected by another person, pay or remit the amount to the Receiver General.
- (3) **Idem.**—Every person who is required under this Part to pay or remit an amount to the Receiver General shall, where the amount is \$50,000 or more, make the payment or remittance to the account of the Receiver General at
 - (a) a bank;
 - (b) a credit union;
 - (c) a corporation authorized under the laws of Canada or a province to carry on the business of offering its services as a trustee to the public; or
 - (d) a corporation authorized under the laws of Canada or a province to accept deposits from the public and that carries on the business of lending money on the security of real

estate or investing in mortgages on real estate. S.C. 1990, c. 45, s. 12; S.C. 1994, c. 9, s. 20.

- **279.** Execution of documents.—A return, certificate or other document made by a person (other than an individual) under this Part or under a regulation made under this Part shall be signed on behalf of the person by an individual duly authorized to do so by the person or the governing body of the person and, where the person is a corporation or an association or organization that has duly elected or appointed officers, the president, vice-president, secretary and treasurer thereof, or other equivalent officers, shall be deemed to be so duly authorized. **S.C.** 1990, c. 45, s. 12.
- **280.** (1) **Penalty and interest.**—Subject to this section and section 281, where a person fails to remit or pay an amount to the Receiver General when required under this Part, the person shall pay on the amount not remitted or paid
 - (a) a penalty of 6% per year, and
 - (b) interest at the prescribed rate,
- computed for the period beginning on the first day following the day on or before which the amount was required to be remitted or paid and ending on the day the amount is remitted or paid.
- (2) **Penalty and interest on instalments.**—Notwithstanding subsection (1), where a person fails to pay all of an instalment payable by the person under subsection 237(1) within the time specified in that subsection, that person shall pay, on the amount of the instalment not paid,
 - (a) a penalty of 6% per year, and
 - (b) interest at the prescribed rate,
- computed for the period beginning on the first day following that time and ending on the earlier of
 - (c) the day the total of the amount, penalty and interest is paid, and
 - (d) the day on or before which the tax on account of which the instalment was payable is required to be remitted.
- (3) **Idem.**—Notwithstanding subsection (2), the total interest and penalties payable by a person under that subsection for the period beginning on the first day of a reporting period for which an instalment on account of tax is payable and ending on the day on or before which the tax on account of which the instalment was payable is required to be remitted shall not exceed the amount, if any, by which
 - (a) the total of the interest and penalties that would be payable under subsection (2) for the period by the person if no amount were paid by the person on account of instalments payable in the period

exceeds

- (b) the total of all amounts each of which is an amount of interest at the prescribed rate plus 6% per year, calculated on an instalment of tax paid in the period beginning on the day of that payment and ending on the day on or before which the tax on account of which the instalment was payable is required to be remitted.
- (4) Unpaid penalty and interest. —Where a person is required to pay a penalty or interest under subsection (2) in respect of an instalment required under subsection 237(1) to be paid within the time specified in that subsection and the penalty or interest, as the case may be,

has not been paid on or before the day on or before which the tax on account of which the instalment was payable is required to be remitted, the penalty or interest, as the case may be, shall be deemed, for the purposes of this Part, to be an amount required to be remitted by the person on or before that day that has not been remitted on or before that day.

- (4.1) Payment of penalty and interest.—Where penalty computed at a rate per year or interest is compounded on a particular day on an amount that a person has failed to pay or remit when required under this Part, the penalty or interest, as the case may be, so compounded shall, for the purpose of this section, be deemed to be required to be paid by the person to the Receiver General at the end of the particular day and, where the person has not paid the penalty or interest, as the case may be, so computed by the end of the next following day, the penalty or interest, as the case may be, shall be added to the amount at the end of the particular day.
- (5) No penalty where security.—Where on a particular day the Minister holds security under section 314 for the payment or remittance of tax or any other amount under this Part and any tax, net tax, instalment or amount under section 264 payable by the person under this Part is not paid or remitted on or before the day on or before which it is required to be paid or remitted under this Part, the penalty under this section shall apply on the particular day only to the extent that the total of the tax, instalments, penalty, interest and other amounts outstanding on the particular day exceeds the value of the security at the time it was accepted by the Minister.
- (6) **Minimum.**—Where at any time a person pays or remits all tax, net tax, instalments and amounts under section 264 payable by the person under this Part for a reporting period of the person and, immediately before that time, the total of all penalties and interest payable by the person under this section for that period is less than \$25, the Minister may write off and cancel the total of the penalties and interest.
- (7) Payment before specified date.—Where the Minister has served a demand that a person pay or remit on or before a specified date all tax, net tax, instalments, amounts under section 264, penalties and interest payable by the person under this Part on the date of the demand, and the person pays the total on or before the specified date, the Minister may waive penalty and interest for the period beginning on the first day following the date of the demand and ending on the day of payment. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 126; S.C. 1994, c. 9, s. 21.
- **281.** (1) Extension for returns.—The Minister may at any time extend in writing the time for filing a return, or providing information, under this Part.
- (2) **Effect of extension.**—Where the Minister extends the time within which a return of a person shall be filed,
 - (a) the return shall be filed, or information shall be provided, within the time as so extended:
 - (b) any tax or net tax payable that the person is required to report in the return shall be paid or remitted within the time so extended;
 - (c) interest is payable under section 280 as if the time had not been extended; and
 - (d) any penalty under section 280 on any tax or net tax payable that the person is required to report in the return is payable only from the expiration of the time as so extended. S.C. 1990, c. 45, s. 12.
- **281.1** (1) **Waiving or cancelling interest.**—The Minister may waive or cancel interest payable by a person under section 280.

- (2) Waiving or cancelling penalties.—The Minister may waive or cancel penalties payable by a person under section 280. S.C. 1993, c. 27, s. 127.
- **282. Demand for return.**—The Minister may, on demand served personally or by registered or certified mail, require any person to file, within such reasonable time as may be stipulated in the demand, a return under this Part for such period or transaction as may be designated in the demand. S.C. 1990, c. 45, s. 12.
- **283. Failure to answer demand.**—Every person who fails to file a return when required pursuant to a demand issued under section 282 is liable to a penalty equal to the greater of
 - (a) \$250, and
 - (b) 5% of the amount of tax payable or net tax remittable by the person for the period or transaction designated in the demand that was unpaid or unremitted on the day that the return was due. S.C. 1990, c. 45, s. 12.
- **284. Failure to provide information.**—Every person who fails to provide any information or document when and as required under this Part or under a regulation made under this Part is, except where the Minister waives the penalty, liable to a penalty of \$100 for every failure unless, in the case of information required in respect of another person, a reasonable effort was made by the person to obtain the information. S.C. 1990, c. 45, s. 12.
- 285. False statements or omissions. Every person who knowingly, or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Part, makes or participates in, assents to or acquiesces in the making of a false statement or omission in a return, application, form, certificate, statement, invoice or answer (in this section referred to as a "return") made in respect of a reporting period or transaction is liable to a penalty of the greater of \$250 and 25% of the amount, if any, by which
 - (a) in the case of net tax for a period,
 - (i) the amount of net tax of the person for the period

exceeds

- (ii) the amount that would be the net tax of the person for the period if the net tax were determined on the basis of the information provided in the return;
- (b) in the case of tax payable for a period or transaction,
 - (i) the amount of tax payable by the person for the period or transaction

exceeds

- (ii) the amount that would be the tax payable by the person for the period or transaction if the tax were determined on the basis of the information provided in the return; and
- (c) in the case of an application for rebate,
 - (i) the amount that would be the rebate payable to the person if the rebate were determined on the basis of the information provided in the return

exceeds

(ii) the amount of the rebate payable to the person. S.C. 1990, c. 45, s. 12.

Subdivision c. General

286. (1) **Keeping books and records.** —Every person who carries on a business or is engaged in a commercial activity in Canada, every person who is required under this Part to file a return and every person who makes an application for a rebate or refund shall keep records in

English or in French in Canada, or at such other place and on such terms and conditions as the Minister may specify in writing, in such form and containing such information as will enable the determination of the person's liabilities and obligations under this Part or the amount of any rebate or refund to which the person is entitled.

- (2) **Inadequate records.**—Where a person fails to keep adequate records for the purposes of this Part, the Minister may require the person to keep such records as the Minister may specify and the person shall thereafter keep the records so specified.
- (3) **Period for retention.**—Every person required under this section to keep records shall retain them until the expiration of six years after the end of the year to which they relate or for such other period as may be prescribed.
- (4) **Objection or appeal.**—Where a person who is required under this section to keep records serves a notice of objection or is a party to an appeal or reference under this Part, the person shall retain, until the objection, appeal or reference and any appeal therefrom is finally disposed of, every record that pertains to the subject-matter of the objection, appeal or reference.
- (5) **Demand by Minister.**—Where the Minister is of the opinion that it is necessary for the administration of this Part, the Minister may, by a demand served personally or by registered or certified mail, require any person required under this section to keep records to retain those records for such period as is specified in the demand.
- (6) **Permission for earlier disposal.**—A person who is required under this section to keep records may dispose of the records before the expiration of the period in respect of which the records are required to be kept if written permission for their disposal is given by the Minister. S.C. 1990, c. 45, s. 12.
 - 287. Definitions.—In sections 288 to 292,
- "authorized person".—"authorized person" means a person who is authorized by the Minister for the purposes of sections 288 to 292;
- "dwelling-house".—"dwelling-house" means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence, and includes
 - (a) a building within the curtilage of a dwelling-house that is connected to it by a doorway or by a covered and enclosed passageway, and
 - (b) a unit that is designed to be mobile and to be used as a permanent or temporary residence and that is being used as such a residence;
- "judge".—"judge" means a judge of a superior court having jurisdiction in the province where the matter arises or a judge of the Federal Court, S.C. 1990, c. 45, s. 12.
- **288.** (1) **Inspections.**—An authorized person may, at all reasonable times, for any purpose related to the administration or enforcement of this Part, inspect, audit or examine the documents, property or processes of a person that may be relevant in determining the obligations of that or any other person under this Part or the amount of any rebate or refund to which that or any other person is entitled and, for those purposes, the authorized person may
 - (a) subject to subsection (2), enter any premises or place where any business or commercial activity is carried on, any property is kept, anything is done in connection with any business or commercial activity or any documents are or should be kept, and
 - (b) require the owner or manager of the property, business or commercial activity and any other person on the premises or in the place to give to the authorized person all reasonable assistance and to answer all proper questions relating to the administration or enforcement

of this Part and, for that purpose, require the owner or manager to attend at the premises or place with the authorized person.

- (2) **Prior authorization.**—Where any premises or place referred to in paragraph (1)(a) is a dwelling-house, an authorized person may not enter that dwelling-house without the consent of the occupant, except under the authority of a warrant issued under subsection (3).
- (3) **Application.**—Where, on *ex parte* application by the Minister, a judge is satisfied by information on oath that
 - (a) there are reasonable grounds to believe that a dwelling-house is a premises or place referred to in paragraph (1)(a),
 - (b) entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Part, and
 - (c) entry into the dwelling-house has been, or there are reasonable grounds to believe that entry will be, refused,

the judge may issue a warrant authorizing an authorized person to enter the dwelling-house subject to such conditions as are specified in the warrant, but, where the judge is not satisfied that entry into the dwelling-house is necessary for any purpose related to the administration or enforcement of this Part, the judge may

- (d) order the occupant of the dwelling-house to provide an authorized person with reasonable access to any document or property that is or should be kept in the dwelling-house, and
- (e) make such other order as is appropriate in the circumstances to carry out the purposes of this Part.

to the extent that access was or may be expected to be refused and that the document or property is or may be expected to be kept in the dwelling-house. S.C. 1990, c. 45, s. 12; S.C. 1994, c. 21, s. 127.

- 289. (1) Requirement to provide documents or information.—Notwithstanding any other provision of this Part, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Part, by notice served personally or by registered or certified mail, require any person to provide the Minister, within such reasonable time as is stipulated in the notice, with
 - (a) any information or additional information, including a return under this Part; or
 - (b) any document.
- (2) Unnamed persons.—The Minister shall not impose on any person (in this section referred to as a "third party") a requirement under subsection (1) to provide information or any document relating to one or more unnamed persons unless the Minister first obtains the authorization of a judge under subsection (3).
- (3) **Judicial authorization.**—On *ex parte* application by the Minister, a judge may, subject to such conditions as the judge considers appropriate, authorize the Minister to impose on a third party a requirement under subsection (1) relating to an unnamed person or more than one unnamed person (in this section referred to as the "group") where the judge is satisfied by information on oath that
 - (a) the person or group is ascertainable; and
 - (b) the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Part.

- (4) Service of authorization.—Where an authorization is granted under subsection (3), the authorization shall be served together with the notice referred to in subsection (1).
- (5) **Review of authorization.**—Where an authorization is granted under subsection (3), a third party on whom a notice is served under subsection (1) may, within fifteen days after the service of the notice, apply to the judge who granted the authorization or, where that judge is unable to act, to another judge of the same court for a review of the authorization.
 - (6) Powers on review.—On hearing an application under subsection (5), a judge may
 - (a) cancel the authorization previously granted if the judge is not then satisfied that the conditions in paragraphs (3)(a) and (b) have been met; or
 - (b) confirm or vary the authorization if the judge is satisfied that those conditions have been met. S.C. 1990, c. 45, s. 12.
- **290.** (1) **Search warrant.**—A judge may, on *ex parte* application by the Minister, issue a warrant authorizing any person named therein to enter and search any building, receptacle or place for any document or thing that may afford evidence of the commission of an offence under this Part and to seize the document or thing and, as soon as is practicable, bring it before, or make a report in respect thereof to, the judge or, where that judge is unable to act, another judge of the same court, to be dealt with by the judge in accordance with this section.
- (2) **Evidence on oath.**—An application under subsection (1) shall be supported by information on oath establishing the facts on which the application is based.
- (3) **Issue of warrant.**—A judge may issue a warrant referred to in subsection (1) where the judge is satisfied that there are reasonable grounds to believe that
 - (a) an offence under this Part has been committed;
 - (b) a document or thing that may afford evidence of the commission of the offence is likely to be found; and
 - (c) the building, receptacle or place specified in the application is likely to contain such a document or thing.
- (4) Contents of warrant.—A warrant issued under subsection (1) shall refer to the offence for which it is issued, identify the building, receptacle or place to be searched and the person who is alleged to have committed the offence, and it shall be reasonably specific as to any document or thing to be searched for and seized.
- (5) **Seizure of document.**—Any person who executes a warrant issued under subsection (1) may seize, in addition to the document or thing referred to in that subsection, any other document or thing that the person believes on reasonable grounds affords evidence of the commission of an offence under this Part and shall, as soon as is practicable, bring the document or thing before, or make a report in respect thereof to, the judge who issued the warrant or, where that judge is unable to act, another judge of the same court, to be dealt with by the judge in accordance with this section.
- (6) **Retention of things seized.**—Subject to subsection (7), where any document or thing seized under subsection (1) or (5) is brought before a judge or a report in respect thereof is made to a judge, the judge shall, unless the Minister waives retention, order that it be retained by the Minister, who shall take reasonable care to ensure that it is preserved until the conclusion of any investigation into the offence in relation to which the document or thing was seized or until it is required to be produced for the purposes of a criminal proceeding.
- (7) **Return of things seized.**—Where any document or thing seized under subsection (1) or (5) is brought before a judge or a report in respect thereof is made to a judge, the judge may,

on the judge's own motion or on summary application by a person with an interest in the document or thing on three clear days notice of application to the Deputy Attorney General of Canada, order that the document or thing be returned to the person from whom it was seized or the person who is otherwise legally entitled thereto, if the judge is satisfied that the document or thing

- (a) will not be required for an investigation or a criminal proceeding; or
- (b) was not seized in accordance with the warrant or this section.
- (8) Access and copies.—The person from whom any document or thing is seized under this section is entitled, at all reasonable times and subject to such reasonable conditions as may be imposed by the Minister, to inspect the document or thing and, in the case of a document, to obtain one copy of the document at the expense of the Minister. S.C. 1990, c. 45, s. 12; S.C. 1994, c. 21, s. 128.
- **291.** (1) **Copies.**—Where any document is seized, inspected, examined or provided under sections 276 and 288 to 290, the person by whom it is seized, inspected or examined or to whom it is provided or any officer of the Department may make, or cause to be made, one or more copies thereof, and any document purporting to be certified by the Minister or an authorized person to be a copy made under this section is evidence of the nature and content of the original document and has the same probative force as the original document would have if it had been proved in the ordinary way.
- (2) **Compliance.**—No person shall hinder, molest or interfere with any other person doing anything that the other person is authorized under subsection (1) or any of sections 276 and 288 to 290 to do or prevent or attempt to prevent any other person from doing any such thing, S.C. 1990, c. 45, s. 12.
- **292.** (1) **Meaning of "foreign-based information or document".**—For the purposes of this section, "foreign-based information or document" means any information or document that is available or located outside Canada and that may be relevant to the administration or enforcement of this Part.
- (2) **Requirement to provide foreign-based information.** Notwithstanding any other provision of this Part, the Minister may, by notice served personally or by registered or certified mail, require a person resident in Canada or a non-resident person who carries on business in Canada to provide any foreign-based information or document.
 - (3) Notice.—A notice referred to in subsection (2) shall set out
 - (a) a reasonable period of time of not less than ninety days for the provision of the information or document:
 - (b) a description of the information or document being sought; and
 - (c) the consequences under subsection (8) to the person of the failure to provide the information or document being sought within the period of time set out in the notice.
- (4) **Review of foreign information requirement.** The person on whom a notice of a requirement is served under subsection (2) may, within ninety days after the service of the notice, apply to a judge for a review of the requirement.
- (5) **Powers on review.**—On hearing an application under subsection (4) in respect of a requirement, a judge may
 - (a) confirm the requirement;
 - (b) vary the requirement if satisfied that it is appropriate in the circumstances; or

- (c) set aside the requirement if satisfied that it is unreasonable.
- (6) **Idem.**—For the purposes of subsection (5), a requirement to provide information or a document shall not be considered to be unreasonable because the information or document is under the control of or available to a non-resident person that is not controlled by the person served with the notice of the requirement under subsection (2) if that person is related to the non-resident person.
- (7) **Time during consideration not to count.**—The period of time between the day an application for the review of a requirement is made under subsection (4) and the day the review is decided shall not be counted in the computation of
 - (a) the period of time set out in the notice of the requirement; and
 - (b) the period of time within which an assessment may be made under section 296 or 297.
- (8) Consequence of failure.—If a person fails to comply substantially with a notice served under subsection (2) and if the notice is not set aside under subsection (5), any court having jurisdiction in a civil proceeding relating to the administration or enforcement of this Part shall, on motion of the Minister, prohibit the introduction by that person of any foreign-based information or document covered by that notice. S.C. 1990, c. 45, s. 12.
 - 293. (1) Definitions.—In this section,
- "custodian".—"custodian" means a person in whose custody a package is placed under subsection (3);
- "judge".—"judge" means a judge of a superior court having jurisdiction in the province where the matter arises or a judge of the Federal Court;
- "lawyer".—"lawyer" means, in the Province of Quebec, an advocate, lawyer or notary and, in any other province, a barrister or solicitor;
- "officer".—"officer" means a person acting under the authority conferred by any of sections 276 and 288 to 291;
- "solicitor-client privilege".—"solicitor-client privilege" means the right, if any, that a person has in a superior court in the province where the matter arises to refuse to disclose an oral or documentary communication on the ground that the communication is one passing between the person and the person's lawyer in professional confidence, except that, for the purposes of this section, an accounting record of a lawyer, including any supporting invoice, voucher or cheque, shall be deemed not to be such a communication.
- (2) Solicitor-client privilege defence.—Where a lawyer is prosecuted for failure to comply with a requirement under section 289 with respect to information or a document, the lawyer shall be acquitted if the lawyer establishes to the satisfaction of the court that the lawyer
 - (a) believed on reasonable grounds that a client of the lawyer had a solicitor-client privilege in respect of the information or document; and
 - (b) communicated to the Minister, or to a person duly authorized to act for the Minister, the lawyer's refusal to comply with the requirement, together with a claim that a named client of the lawyer had a solicitor-client privilege in respect of the information or document.
- (3) Seizure where privilege claimed.—Where, under section 290, an officer is about to seize a document in the possession of a lawyer and the lawyer claims that a named client of the lawyer has a solicitor-client privilege in respect of the document, the officer shall, without inspecting, examining or making copies of the document,
 - (a) seize the document and place it, together with any other document in respect of which

the lawyer at the same time makes the same claim on behalf of the same client, in a package and suitably seal and identify the package; and

- (b) place the package in the custody of the sheriff of the district or county in which the seizure was made or, if the officer and the lawyer agree in writing on a person to act as custodian, in the custody of that person.
- (4) **Retention where privilege claimed.**—Where, under section 288 or 289, an officer is about to inspect or examine a document in the possession of a lawyer and the lawyer claims that a named client of the lawyer has a solicitor-client privilege in respect of the document, the officer shall not inspect or examine the document and the lawyer shall
 - (a) place the document, together with any other document in respect of which the lawyer at the same time makes the same claim on behalf of the same client, in a package and suitably seal and identify the package or, if the officer and the lawyer agree, allow the pages of the document to be initialed and numbered or otherwise suitably identified; and
 - (b) retain it and ensure that it is preserved until it is produced to a judge as required under this section and an order is issued under this section in respect of the document.
- (5) **Application to judge.**—Where a document is seized and placed in custody under subsection (3) or is retained under subsection (4), the client, or the lawyer on behalf of the client, may
 - (a) within fourteen days after the day the document was so placed in custody or began to be so retained apply, on three clear days notice of motion to the Deputy Attorney General of Canada, to a judge for an order
 - (i) fixing a day, not later than twenty-one days after the date of the order, and a place for the determination of the question whether the client has a solicitor-client privilege in respect of the document, and
 - (ii) requiring the production of the document to the judge at that time and place;
 - (b) serve a copy of the order on the Deputy Attorney General of Canada and, where applicable, on the custodian within six days after the day it was made and, within the same time, pay to the custodian the estimated expenses of transporting the document to and from the place of hearing and of safeguarding it; and
 - (c) if the client or lawyer has proceeded as authorized by paragraph (b), apply at the appointed time and place for an order determining the question.
- (6) **Disposition of application.**—An application made under paragraph (5)(c) shall be heard *in camera* and, on the application, the judge
 - (a) may, if the judge considers it necessary to determine the question, inspect the document and, if the judge does so, the judge shall ensure that it is repackaged and resealed; and
 - (b) shall decide the matter summarily, and if the judge is of the opinion that the client
 - (i) has a solicitor-client privilege in respect of the document, the judge shall order the release of the document to the lawyer, and
 - (ii) does not have a solicitor-client privilege in respect of the document, the judge shall order that
 - (A) the custodian deliver the document to the officer or some other person designated by the Deputy Minister in the case of a document that was seized and placed in custody under subsection (3), or

(B) the lawyer make the document available for inspection or examination by the officer or other person designated by the Deputy Minister in the case of a document that was retained under subsection (4),

and shall, at the same time, deliver concise reasons in which the document shall be identified without divulging any of its details.

- (7) **Order on application.**—Where a document is seized and placed in custody under subsection (3) or is retained under subsection (4) and a judge, on the application of the Attorney General of Canada, is satisfied that neither the client nor the lawyer has made an application under paragraph (5)(a) or, having made such an application, that neither the client nor the lawyer has made an application under paragraph (5)(c), the judge shall order that
 - (a) the custodian deliver the document to the officer or some other person designated by the Deputy Minister in the case of a document that was seized and placed in custody under subsection (3); or
 - (b) the lawyer make the document available for inspection or examination by the officer or other person designated by the Deputy Minister in the case of a document that was retained under subsection (4).
 - (8) Delivery by custodian.—The custodian shall deliver the document
 - (a) to the lawyer
 - (i) in accordance with a consent executed by the officer or by or on behalf of the Deputy Attorney General of Canada or the Deputy Minister, or
 - (ii) in accordance with an order of a judge under this section; or
 - (b) to the officer or some other person designated by the Deputy Minister
 - (i) in accordance with a consent executed by the lawyer or the client, or
 - (ii) in accordance with an order of a judge under this section.
- (9) **Continuation by another judge.**—Where the judge to whom an application is made under paragraph (5)(a) cannot for any reason act or continue to act in the application under paragraph (5)(c), the application under paragraph (5)(c) may be made to another judge.
- (10) Costs.—No costs may be awarded on the disposition of any application under this section.
- (11) **Directions.**—Where any question arises as to the course to be followed in connection with anything done or being done under this section, other than subsection (2), (3) or (4), and there is no direction in this section with respect thereto, a judge may give such direction with regard thereto as, in the judge's opinion, is most likely to carry out the object of this section of allowing solicitor-client privilege for proper purposes.
- (12) **Prohibition.**—The custodian shall not deliver a document to any person except in accordance with an order of a judge or a consent under this section or except to any officer or servant of the custodian for the purposes of safeguarding the document.
- (13) **Idem.**—No officer shall inspect, examine or seize a document in the possession of a lawyer without giving the lawyer a reasonable opportunity to make a claim under this section.
- (14) **Copies.**—At any time while a document is in the custody of a custodian under this section, a judge may, on *ex parte* application of the lawyer, by order, authorize the lawyer to examine or make a copy of the document in the presence of the custodian or the judge, which order shall contain such provisions as may be necessary to ensure that the document is repackaged and that the package is resealed without alteration or damage.

- (15) Waiver of privilege.—Where, for the purpose of subsection (2), (3) or (4), a lawyer makes a claim that a named client of the lawyer has a solicitor-client privilege in respect of information or a document, the lawyer shall at the same time communicate to the Minister or to a person duly authorized to act for the Minister the address of the client last known to the lawyer so that the Minister may endeavour to advise the client of the claim of privilege that has been made on the client's behalf and thereby give the client an opportunity, if it is practicable within the time limited by this section, to waive the claim of privilege before the matter is to be decided by a judge or other tribunal.
- (16) Compliance.—No person shall hinder, molest or interfere with any person doing anything that the person is authorized to do under this section or prevent or attempt to prevent any person doing any such thing and, notwithstanding any other Act or law, every person shall, unless the person is unable to do so, do everything the person is required to do under this section. S.C. 1990, c. 45, s. 12.
- **294.** Information respecting non-resident persons.—Every corporation that, at any time in a taxation year, was resident in Canada or carried on business or a commercial activity in Canada shall, in respect of each non-resident person with whom it was not dealing at arm's length at any time in the year, file with the Minister, within six months after the end of the year, prescribed information for the year in respect of transactions with that person. S.C. 1990, c. 45, s. 12.
 - 295. (1) Definitions.—In this section,
- "authorized person".—"authorized person" means a person who is engaged or employed, or who was formerly engaged or employed, by or on behalf of Her Majesty in right of Canada to assist in carrying out the provisions of this Act;
- "confidential information".—"confidential information" means information of any kind and in any form that relates to one or more persons and that is
 - (a) obtained by or on behalf of the Minister for the purposes of this Part, or
 - (b) prepared from information referred to in paragraph (a),
- but does not include information that does not directly or indirectly reveal the identity of the person to whom it relates.
- "court of appeal".—"court of appeal" has the meaning assigned by the definition of that expression in section 2 of the *Criminal Code*;
- "official".—"official" means a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of. Her Majesty in right of Canada or a province, or a person who was formerly so employed, who formerly occupied such a position or who formerly was so engaged;
- (2) **Provision of information.** Except as authorized under this section, no official shall **knowingly**
 - (a) provide, or allow to be provided, to any person any confidential information;
 - (b) allow any person to have access to any confidential information; or
 - (c) use any confidential information other than in the course of the administration or enforcement of this Part.
- (3) **Idem.**—Notwithstanding any other Act of Parliament or other law, no official shall be required, in connection with any legal proceedings, to give or produce evidence relating to any confidential information.

- (4) Communications where proceedings have been commenced.—Subsections (2) and (3) do not apply in respect of
 - (a) criminal proceedings, either by indictment or on summary conviction, that have been commenced by the laying of an information or the preferring of an indictment, under an Act of Parliament; or
 - (b) any legal proceedings relating to the administration or enforcement of this Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or any other Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty.
- (4.1) Circumstances involving danger.—The Minister may provide to appropriate persons any confidential information relating to imminent danger of death or physical injury to any individual.
 - (5) Disclosure of personal information.—An official may
 - (a) provide such confidential information to any person as may reasonably be regarded as necessary for the purpose of the administration or enforcement of this Act, solely for that purpose;
 - (b) provide to a person confidential information that can reasonably be regarded as necessary for the purposes of determining any liability or obligation of the person or any refund, rebate or input tax credit to which the person is or may become entitled under this Act:
 - (c) provide, allow to be provided, or allow inspection of or access to any confidential information to or by
 - (i) any person, or any person within a class of persons, that the Minister may authorize, subject to such conditions as the Minister may specify, or
 - (ii) any person otherwise legally entitled thereto by reason of an Act of Parliament, solely for the purposes for which that person is entitled to the information;
 - (d) provide confidential information
 - (i) to an official of the Department of Finance solely for the purposes of the formulation or evaluation of fiscal policy,
 - (ii) to an official solely for the purposes of the initial implementation of a fiscal policy or for the purposes of the administration or enforcement of the *Canada Pension Plan*, the *Unemployment Insurance Act* or an Act of Parliament that provides for the imposition or collection of a tax or duty,
 - (iii) to an official solely for the purposes of the administration or enforcement of a law of a province that provides for the imposition or collection of a tax or duty,
 - (iv) to an official of the government of a province solely for the purposes of the formulation or evaluation of fiscal policy,
 - (v) to an official of a department or agency of the Government of Canada or of a province as to the name, address, occupation, size or type of business of a person, solely for the purposes of enabling that department or agency to obtain statistical data for research and analysis,
 - (vi) to an official solely for the purposes of setting off, against any sum of money that may be due or payable by Her Majesty in right of Canada, a debt due to
 - (A) Her Majesty in right of Canada, or
 - (B) Her Majesty in right of a province on account of taxes payable to the province

where an agreement exists between Canada and the province under which Canada is authorized to collect taxes on behalf of the province, or

- (vii) to an official solely for the purposes of section 7.1 of the Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act;
- (e) provide confidential information solely for the purposes of sections 23 to 25 of the *Financial Administration Act*;
- (f) use confidential information to compile information in a form that does not directly or indirectly reveal the identity of the person to whom the information relates;
- (g) use, or provide to any person, confidential information solely for a purpose relating to the supervision, evaluation or discipline of an authorized person by Her Majesty in right of Canada in respect of a period during which the authorized person was employed by or engaged by or on behalf of Her Majesty in right of Canada to assist in the administration or enforcement of this Act, to the extent that the information is relevant for that purpose:
- (h) provide access to records of confidential information to the National Archivist of Canada or a person acting on behalf of or under the direction of the National Archivist of Canada, solely for the purposes of section 5 of the *National Archives of Canada Act*, and transfer such records to the care and control of such persons solely for the purposes of section 6 of that Act; or
- (i) use confidential information relating to a person to provide information to the person.
- (5.1) Measures to prevent unauthorized use or disclosure. —The person presiding at a legal proceeding relating to the supervision, evaluation or discipline of an authorized person may order such measures as are necessary to ensure that confidential information is not used or provided to any person for any purpose not relating to that proceeding, including
 - (a) holding a hearing in camera;
 - (b) banning the publication of the information;
 - (c) concealing the identity of the person to whom the information relates; and
 - (d) sealing the records of the proceeding.
- (6) Disclosure to taxpayer or on consent.—An official may provide confidential information relating to a person
 - (a) to that person; and
 - (b) with the consent of that person, to any other person.
- (7) **Appeal from order or direction.** —An order or direction that is made in the course of or in connection with any legal proceedings and that requires an official to give or produce evidence relating to any confidential information may, by notice served on all interested parties, be appealed forthwith by the Minister or by the person against whom the order or direction is made to
 - (a) the court of appeal of the province in which the order or direction is made, in the case of an order or direction made by a court or other tribunal established under the laws of the province, whether that court or tribunal is exercising a jurisdiction conferred by the laws of Canada; or
 - (b) the Federal Court of Appeal, in the case of an order or direction made by a court or other tribunal established under the laws of Canada.
 - (8) **Disposition of appeal.** The court to which an appeal is taken under subsection (7)

may allow the appeal and quash the order or direction appealed from or may dismiss the appeal, and the rules of practice and procedure from time to time governing appeals to the courts shall apply, with such modifications as the circumstances require, in respect of an appeal instituted under subsection (7).

(9) Stay.—An appeal instituted under subsection (7) shall stay the operation of the order or direction appealed from until judgment is pronounced. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 128.

Subdivision d. Assessments, objections and appeals

Assessments

296. (1) Assessments.—The Minister may assess

- (a) the net tax of a person under Division V for a reporting period of the person,
- (b) any tax payable by a person under Division II or IV,
- (c) any penalty or interest payable by a person under this Part,
- (d) any amount payable by a person under section 230.1, and
- (e) any amount for which a person became liable under Subdivision a of Division VII, and may reassess or make an additional assessment of tax, net tax, penalty, interest or an amount referred to in paragraph (d) or (e).
- (2) Allowance of credit.—Where, in assessing the net tax of a person for a reporting period of the person under this section, the Minister determines that
 - (a) an amount in respect of an input tax credit of the person for the period was not claimed by the person in a return under Division V filed for any reporting period ending before the day notice of the assessment is sent to the person, or
 - (b) an amount that could have been deducted by the person under Division V in determining the net tax for the reporting period was not deducted by the person in a return under Division V filed for the period,

the Minister may take the amount into account in making the assessment as if the person had claimed or deducted the amount in a return filed for the period.

- (3) Application or payment of excess credit.—Where, in assessing the net tax of a person for a reporting period of the person under this section, the Minister determines that there is an overpayment of net tax for the period, except where the assessment for that period is made under subsection 298(4) after the time otherwise limited therefor by paragraph 298(1)(a), the Minister may
 - (a) apply, against any net tax remittable by the person for any other reporting period for which a return has been filed before the day the notice of assessment is sent to the person, an amount not exceeding the overpayment and interest on that amount at the prescribed rate, computed for the period beginning on the day that is twenty-one days after the later of
 - (i) the day on or before which the return for the period was required under this Part to be filed, and
 - (ii) the day the return for the period was filed

and ending on the day on or before which that net tax was required under this Part to be remitted; and

- (b) refund to the person that part of the amount of the overpayment that was not applied under paragraph (a) together with interest thereon at the prescribed rate, computed for the period beginning on the day that is twenty-one days after the later of
 - (i) the day on or before which the return for the period was required under this Part to be filed, and
 - (ii) the day the return for the period was filed

and ending on the day the refund is made.

- (4) Allowance of rebate or refund.—Where, in assessing the net tax of a person or the tax payable by a person, the Minister determines that tax under Division II or IV is payable by the person and that a rebate or refund provided for under this Part of all or part of that tax would have been payable to the person if the person had paid that tax and applied for the rebate or refund in accordance with this Part, the Minister may
 - (a) apply the amount of the rebate or refund against the amount assessed on account of that tax as if the person had filed an application for the rebate or refund
 - (i) where the person was required to account for that tax in a return, on the day on or before which the return was required to be filed, and
 - (ii) in any other case, on the day the tax became payable; or
 - (b) except where the assessment is made under subsection 298(4) after the time otherwise limited therefor by subsection 298(1), pay the rebate or refund to the person or apply it against any net tax remittable or tax payable by the person for any reporting period of the person for which a return was filed before the day the assessment is made.
- (4.1) **Idem.**—Where, in assessing the net tax of a person or the tax payable by a person, the Minister determines that the person included, in determining an input tax credit of the person, an amount that exceeds the amount that the person was entitled to so include (which excess is referred to in this subsection as the "excess amount") and a rebate or refund provided for under this Part of all or part of the excess amount would have been payable to the person if the person had applied for the rebate or refund in accordance with this Part, the Minister may
 - (a) apply the amount of the rebate or refund against the amount assessed on account of the excess amount as if the person had filed an application for the rebate or refund on the day on or before which the person was required to file the return in which the excess amount was claimed; or
 - (b) except where
 - (i) the rebate is payable under subsection 216(6) in respect of imported goods and the assessment is not made within two years after the goods were released, or
 - (ii) the assessment is made under subsection 298(4) after the time otherwise limited therefor by subsection 298(1),

pay the rebate or refund to the person or apply it against any net tax remittable or tax payable by the person for any reporting period of the person for which a return was filed before the day the assessment is made.

(5) **Deemed claim or application.** —Where, in assessing the net tax of a person or the tax payable by a person, the Minister takes into account an amount in respect of an input tax credit or a deduction under subsection (2) or applies or pays an overpayment under any of subsections (3) to (4.1),

- (a) the person shall be deemed to have claimed the credit or deduction in a return filed under this Part or to have filed an application for the rebate; and
- (b) to the extent that an overpayment or rebate is applied against any tax payable or net tax remittable by the person under this Part, the Minister shall be deemed to have refunded the overpayment or paid the rebate to the person and the person shall be deemed to have paid the tax or net tax against which it was applied.
- (6) **Refund on reassessment.**—Where a person has paid an amount on account of tax, net tax, penalty, interest or other amount assessed under this section and the amount paid exceeds the amount determined on reassessment to have been payable or remittable by the person, the Minister shall refund to the person the amount of the excess, together with interest thereon at the prescribed rate for the period beginning on the day the amount was paid by the person and ending on the day the refund is paid.
- (7) **Minimum interest.**—Interest of less than one dollar shall not be paid or applied under this section.
- (8) Meaning of "overpayment of net tax".—In this section, "overpayment of net tax" of a person for a reporting period of the person means the amount, if any, by which the total of
 - (a) all amounts remitted by the person on account of net tax for the period, and
- (b) where the net tax for the period is negative, the net tax refund for the period, exceeds the total of
 - (c) where the net tax for the period is positive, the net tax for the period, and
 - (d) all amounts paid to the person as a net tax refund for the period. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 129.
- **297.** (1) Assessment of rebate.—On receipt of an application made by a person for a rebate under section 215.1 or Division VI, the Minister shall, with all due dispatch, consider the application and assess the amount of the rebate, if any, payable to the person.
- (2) **Reassessment.**—The Minister may reassess or make an additional assessment of the amount of a rebate, notwithstanding any previous assessment of the amount of the rebate.
- (2.1) Assessment of overpayment of rebate.—The Minister may assess, reassess or make an additional assessment of an amount payable by a person under section 264, notwithstanding any previous assessment of the amount.
- (3) Payment of rebate.—Where, on assessment under this section, the Minister determines that a rebate is payable to a person, the Minister shall pay the rebate to the person.
- (4) **Interest on rebate.**—Where a rebate under section 215.1 or Division VI (other than section 253) is paid to a person under subsection (3), the Minister shall pay interest at the prescribed rate to the person on the rebate for the period beginning on the day that is
 - (a) in the case of a rebate under section 257, 258 or 259, twenty-one days, and
 - (b) in any other case, sixty days

after the day the application in which the rebate is claimed is filed with the Minister and ending on the day the rebate is paid.

- (5) **Minimum interest.**—Interest of less than one dollar shall not be paid under subsection (4). S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 130.
- **298.** (1) **Period for assessment.**—Subject to subsections (3) to (6), an assessment of a person shall not be made under section 296

(a) in the case of

- (i) an assessment of net tax of the person for a reporting period of the person.
- (ii) an amount payable under section 230.1 in respect of an amount paid to, or applied to a liability of, the person as a refund under Division V in respect of a reporting period of the person, or
- (iii) an amount payable under section 230.1 in respect of an amount paid to, or applied to a liability of, the person as interest under Division V in respect of an amount paid or applied as a refund in respect of a reporting period of the person,

more than four years after the later of the day on or before which the person was required under section 238 to file a return for the period and the day the return was filed;

- (b) in the case of an assessment of tax payable by the person under Division II in respect of a supply of real property made by way of sale to that person by a supplier in circumstances in which subsection 221(2) applies, more than four years after the later of the day on or before which the person was required under section 228 to file a return in respect of the supply and the day the return was filed;
- (c) in the case of an assessment of tax payable by the person under Division II, other than tax referred to in paragraph (b), more than four years after the tax became payable;
- (d) in the case of an assessment of tax payable by the person under Division IV, more than four years after the later of the day on or before which the person was required under section 219 to file a return in respect of the tax and the day the return was filed;
- (e) in the case of any penalty payable by the person, other than a penalty under section 280 or 285, more than four years after the person became liable to the penalty;
- (f) in the case of an assessment of an amount for which a person became liable under section 266 or subsection 270(4), more than four years after the person became liable; and
- (g) in the case of an assessment for an amount for which a trustee in bankruptcy became liable under Subdivision a of Division VII, after the earlier of
 - (i) the day that is ninety days after the return under this Part on which the assessment is based is filed with, or other evidence of the facts on which the assessment is based comes to the attention of, the Minister, and
 - (ii) the expiration of the period determined under whichever of paragraphs (a) to (e) applies in the circumstances.
- (2) **Idem.**—Subject to subsections (3) to (6), an assessment under subsection 297(1) of the amount of a rebate may be made at any time, but a reassessment or additional assessment under section 297 or an assessment under subsection 297(2.1) in respect of an amount paid or applied as a rebate or of an amount paid or applied as interest in respect of an amount paid or applied as a rebate shall not be made more than four years after the day the application for the rebate was filed in accordance with this Part.
- (3) **Exception.**—Subsections (1) and (2) do not apply in respect of a reassessment made to give effect to a decision on an objection or appeal.
- (4) **Idem.**—An assessment in respect of any matter may be made at any time where the person to be assessed has, in respect of that matter,
 - (a) made a misrepresentation that is attributable to the person's neglect, carelessness or wilful default:
 - (b) committed fraud

- (i) in making or filing a return under this Part,
- (ii) in making or filing an application for a rebate under Division VI, or
- (iii) in supplying, or failing to supply, any information under this Part; or
- (c) filed a waiver under subsection (7) that is in effect at that time.
- (5) **Idem.**—Where, in making an assessment, the Minister determines that a person has paid in respect of any matter an amount as or on account of tax payable or net tax remittable for a particular reporting period of the person that was in fact payable or remittable for another reporting period of the person, the Minister may at any time make an assessment for that other period in respect of that matter.
- (6) **Idem.**—Where the result of a reassessment on an objection to, or a decision on an appeal from, an assessment is to reduce the amount of tax payable by a person and, by reason of the reduction, any input tax credit or rebate claimed by the person for a reporting period, or in an application for a rebate, should be reduced, the Minister may assess or reassess that reporting period or that application for rebate, as the case may be, only for the purpose of taking the reduction of tax into account in respect of the input tax credit or rebate.
- (7) Waiver.—Any person may, within the time otherwise limited by subsection (1) or (2) for assessing the person, waive the application of subsection (1) or (2) by filing with the Minister a waiver in the prescribed form specifying the matter in respect of which the person waives the application of that subsection.
- (8) **Revoking waiver.**—Any person who files a waiver under subsection (7) may revoke the waiver on six months notice to the Minister by filing with the Minister a notice of revocation of the waiver in the prescribed form. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 131; S.C. 1994, c. 9, s. 22.
- **299.** (1) **Minister not bound.**—The Minister is not bound by any return, application or information provided by or on behalf of any person and may make an assessment, notwith-standing any return, application or information so provided or that no return, application or information has been provided.
- (2) Liability not affected.—Liability under this Part to pay or remit any tax, penalty, interest or other amount is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.
- (3) Assessment valid and binding.—An assessment, subject to being vacated on an objection or appeal under this Part and subject to a reassessment, shall be deemed to be valid and binding.
- (4) Assessment deemed valid.—An assessment shall, subject to being reassessed or vacated as a result of an objection or appeal under this Part, be deemed to be valid and binding, notwithstanding any error, defect or omission therein or in any proceeding under this Part relating thereto.
- (5) Irregularities.—An appeal from an assessment shall not be allowed by reasons only of an irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Part. S.C. 1990, c. 45, s. 12.
- **300.** (1) **Notice of assessment.**—After making an assessment, the Minister shall send to the person assessed a notice of the assessment.
- (2) **Scope of notice.**—A notice of assessment may include assessments of more than one reporting period or transaction. S.C. 1990, c. 45, s. 12.

Objections and Appeals

- **301.** (1) **Objection to assessment.**—Any person who has been assessed and who objects to the assessment may, within ninety days after the day notice of the assessment is sent to the person, file with the Minister a notice of objection in the prescribed form and manner setting out the reasons for the objection and all relevant facts.
- (2) **Acceptance of objection.**—The Minister may accept a notice of objection notwithstanding that it was not filed in the prescribed manner.
- (3) **Consideration of objection.**—On receipt of a notice of objection, the Minister shall, with all due dispatch, reconsider the assessment and vacate or confirm the assessment or make a reassessment.
- (4) Waiving reconsideration.—Where, in a notice of objection, a person who wishes to appeal directly to the Tax Court requests the Minister not to reconsider the assessment objected to, the Minister may confirm the assessment without reconsideration.
- (5) **Notice of decision.**—After reconsidering an assessment under subsection (3) or confirming an assessment under subsection (4), the Minister shall send to the person objecting notice of the Minister's decision by registered or certified mail. S.C. 1990, c. 45, s. 12.
- **302. Appeal to Tax Court.**—Where a person files a notice of objection to an assessment and the Minister sends to the person a notice of a reassessment or an additional assessment, in respect of any matter dealt with in the notice of objection, the person may, within ninety days after the day the notice of reassessment or additional assessment was sent by the Minister.
 - (a) appeal therefrom to the Tax Court; or
 - (b) where an appeal has already been instituted in respect of the matter, amend the appeal by joining thereto an appeal in respect of the reassessment or additional assessment in such manner and on such terms as the Tax Court directs. S.C. 1990, c. 45, s. 12.
- **303.** (1) Extension of time by Minister.—Where no objection to an assessment is filed under section 301, or no request has been made under subsection 274(6), within the time limit otherwise provided, a person may make an application to the Minister to extend the time for filing a notice of objection or a request and the Minister may grant the application.
- (2) **Contents of application.** —An application made under subsection (1) shall set out the reasons why the notice of objection or the request was not filed within the time otherwise limited by this Part for doing so.
- (3) How application made.—An application under subsection (1) shall be made by sending to the Deputy Minister by registered mail two copies of the application accompanied by two copies of the notice of objection or two copies of the request, as the case may be.
- (4) **Idem.**—The Minister may accept an application made under this section notwithstanding that it was not made in duplicate or sent by registered mail to the Deputy Minister.
- (5) **Duties of Minister.**—On receipt of an application made under subsection (1), the Minister shall, with all due dispatch, consider the application and grant or refuse it, and shall thereupon notify the person of the decision by registered or certified mail.
- (6) Date of objection if application granted.—Where an application made under subsection (1) is granted, the notice of objection or the request shall be considered to have been filed on the day the decision of the Minister is mailed to the person.
 - (7) **When order to be made.**—No application shall be granted under this section unless (a) the application is made within one year after the expiration of the time otherwise

limited by this Part for objecting or making a request under subsection 274(6), as the case may be; and

- (b) the person demonstrates that
 - (i) within the time otherwise limited by this Part for objecting,
 - (A) the person was unable to act or to give a mandate to act in the person's name, or
 - (B) the person had a bona fide intention to object to the assessment or make the request,
 - (ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and
 - (iii) the application was made as soon as circumstances permitted it to be made. S.C. 1990, c. 45, s. 12.
- **304.** (1) Extension of time by Tax Court.—A person who has made an application under section 303 may apply to the Tax Court to have the application granted after either
 - (a) the Minister has refused the application, or
 - (b) ninety days have elapsed after service of the application under subsection 303(1) and the Minister has not notified the person of the Minister's decision.

but no application under this section may be made after the expiration of thirty days after the day the decision has been mailed to the person under subsection 303(5).

- (2) **How application made.**—An application under subsection (1) shall be made by filing with the Registrar of the Tax Court or by sending to the Registrar by registered mail three copies of the documents filed under subsection 303(3).
- (3) **Copy to Deputy Minister.**—After receiving an application made under this section, the Tax Court shall send a copy of the application to the office of the Deputy Minister.
- (4) Powers of Court.—The Tax Court may dispose of an application made under subsection (1) by
 - (a) dismissing it, or
 - (b) granting it,

and in granting an application, it may impose such terms as it deems just or order that the notice of objection or the request be deemed to be a valid objection or request as of the date of the order.

- (5) When application to be granted.—No application shall be granted under this section unless
 - (a) the application was made under subsection 303(1) within one year after the expiration of the time otherwise limited by this Part for objecting or making a request under subsection 274(6), as the case may be; and
 - (b) the person demonstrates that
 - (i) within the time otherwise limited by this Act for objecting,
 - (A) the person was unable to act or to give a mandate to act in the person's name, or
 - (B) the person had a bona fide intention to object to the assessment or make the request,
 - (ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

- (iii) the application was made under subsection 303(1) as soon as circumstances permitted it to be made. S.C. 1990, c. 45, s. 12.
- **305.** (1) Extension of time to appeal.—Where no appeal to the Tax Court under section 306 has been instituted within the time limited by that provision for doing so, a person may make an application to the Tax Court for an order extending the time within which an appeal may be instituted, and the Court may make an order extending the time for appealing and may impose such terms as it deems just.
- (2) **Contents of application.**—An application made under subsection (1) shall set out the reasons why the appeal to the Tax Court was not instituted within the time otherwise limited by this Part for doing so.
- (3) **How application made.**—An application made under subsection (1) shall be made by filing with the Registrar of the Tax Court or by sending to the Registrar by registered mail three copies of the application accompanied by three copies of the notice of appeal.
- (4) Copy to Deputy Attorney General of Canada.—After receiving an application made under this section, the Tax Court shall send a copy of the application to the office of the Deputy Attorney General of Canada.
 - (5) When order to be made.—No order shall be made under this section unless
 - (a) the application is made within one year after the expiration of the time otherwise limited by this Part for appealing; and
 - (b) the person demonstrates that
 - (i) within the time otherwise limited by this Part for appealing,
 - (A) the person was unable to act or to give a mandate to act in the person's name, or
 - (B) the person had a bona fide intention to appeal,
 - (ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application,
 - (iii) the application was made as soon as circumstances permitted it to be made, and
 - (iv) there are reasonable grounds for appealing from the assessment, S.C. 1990, c. 45, s. 12.
- **306.** Appeal.—A person who has filed a notice of objection to an assessment under this Subdivision may appeal to the Tax Court to have the assessment vacated or a reassessment made after either
 - (a) the Minister has confirmed the assessment or has reassessed, or
 - (b) one hundred and eighty days have elapsed after the filing of the notice of objection and the Minister has not notified the person that the Minister has vacated or confirmed the assessment or has reassessed,
- but no appeal under this section may be instituted after the expiration of ninety days after the day notice is sent to the person under section 301 that the Minister has confirmed the assessment or has reassessed. S.C. 1990, c. 45, s. 12.
- **307. Institution of appeals.**—An appeal to the Tax Court under this Act, other than one referred to in section 18.3001 of the *Tax Court of Canada Act*, shall be instituted in the manner set out in that Act or in any rules made under that Act. S.C. 1990, c. 45, s. 12.
- **308.** (1) **Notice to Deputy Minister.**—Where an appeal is made to the Tax Court under section 18.3001 of the *Tax Court of Canada Act*, the Court shall forthwith send a copy of the notice of appeal to the office of the Deputy Minister.

- (2) **Notice, etc., forwarded to Tax Court.**—Forthwith after receiving notice under subsection (1) of an appeal, the Deputy Minister shall forward to the Tax Court and the appellant copies of all returns, applications, notices of assessment, notices of objection and notifications, if any, that are relevant to the appeal and, on being so forwarded, those copies shall form part of the record before the Tax Court in an appeal under section 18.3001 of the *Tax Court of Canada Act* and are evidence of the existence of the documents and of the making of the statements contained in them. S.C. 1990, c. 45, s. 12.
- **309.** (1) **Disposition of appeal.**—The Tax Court may dispose of an appeal from an assessment by
 - (a) dismissing it; or
 - (b) allowing it and
 - (i) vacating the assessment, or
 - (ii) referring the assessment back to the Minister for reconsideration and reassessment.
 - (2) [Repealed] S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 132.
- **310.** (1) **References to Tax Court.**—Where the Minister and another person agree in writing that a question arising under this Part, in respect of any assessment or proposed assessment, should be determined by the Tax Court, that question shall be determined by that Court.
- (2) **Time during consideration not to count.**—The time between the day proceedings are instituted in the Tax Court to have a question determined under subsection (1) and the day the question is finally determined shall not be counted in the computation of
 - (a) the four-year periods referred to in section 298,
 - (b) the time for service of a notice of objection to an assessment under section 301, or
 - (c) the time within which an appeal may be instituted under section 306,

for the purpose of making an assessment of a person who agreed in writing to the determination of the question, for the purpose of serving a notice of objection thereto or for the purpose of instituting an appeal therefrom, as the case may be. S.C. 1990, c. 45, s. 12.

- 311. (1) Reference of common questions to Tax Court.—Where the Minister is of the opinion that a question arising out of one and the same transaction or occurrence or series of transactions or occurrences is common to assessments or proposed assessments in respect of two or more persons, the Minister may apply to the Tax Court for a determination of the question.
 - (2) Idem.—An application made under subsection (1) shall set out
 - (a) the question in respect of which the Minister requests a determination,
 - (b) the names of the persons that the Minister seeks to have bound by the determination of the question, and
 - (c) the facts and reasons on which the Minister relies and on which the Minister based or intends to base assessments of each person named in the application,

and a copy of the application shall be served by the Minister on each of the persons named therein and on any other person who, in the opinion of the Tax Court, is likely to be affected by the determination of the question.

(3) Where Tax Court may determine question.—Where the Tax Court is satisfied that a determination of a question set out in an application made under this section will affect assessments or proposed assessments in respect of two or more persons who have been served

with a copy of the application and who are named in an order of the Tax Court under this subsection, it may

- (a) if none of the persons so named has appealed from such an assessment, proceed to determine the question in such manner as it considers appropriate; or
- (b) if one or more of the persons so named has or have appealed, make such order joining a party or parties to that or those appeals as it considers appropriate and proceed to determine the question.
- (4) **Determination final and conclusive.**—Subject to subsection (5), where a question set out in an application made under this section is determined by the Tax Court, the determination thereof is final and conclusive for the purposes of any assessments of persons named by it under subsection (3).
- (5) **Appeal.**—Where a question set out in an application made under this section is determined by the Tax Court, the Minister or any of the persons who have been served with a copy of the application and who are named in an order of the Court under subsection (3) may, in accordance with the provisions of this Part, the *Tax Court of Canada Act* or the *Federal Court Act*, as they relate to appeals from or applications for judicial review of decisions of the Tax Court, appeal from the determination.
- (6) **Parties to appeal.**—The parties bound by a determination under subsection (4) are parties to any appeal therefrom under subsection (5).
- (7) **Time during consideration not counted.**—The time between the day an application **made under this section is served on a person under subsection** (2) and
 - (a) in the case of a person named in an order of the Tax Court under subsection (3), the day the determination becomes final and conclusive and not subject to any appeal, or
 - (b) in the case of any other person, the day the person is served with notice that the person has not been named in an order of the Tax Court under subsection (3),

shall not be counted in the computation of

- (c) the four-year periods referred to in section 298,
- (d) the time for service of a notice of objection to an assessment under section 301, or
- (e) the time within which an appeal may be instituted under section 306,

for the purpose of making an assessment of the person, serving a notice of objection thereto or instituting an appeal therefrom, as the case may be. S.C. 1990, c. 45, s. 12.

312. Statutory recovery rights only.—Except as specifically provided in this Part, the *Customs Act* or the *Financial Administration Act*, no person has a right to recover any money paid to Her Majesty as or on account of, or that has been taken into account by Her Majesty as, tax, net tax, penalty, interest or any other amount under this Part. S.C. 1990, c. 45, s. 12.

Subdivision e. Collection

- **313.** (1) **Debts to Her Majesty.**—All taxes, net taxes, interest, penalties, costs and other amounts payable under this Part are debts due to Her Majesty in right of Canada and are recoverable as such in the Federal Court or any other court of competent jurisdiction or in any other manner provided under this Part.
- (2) **Limitation.**—No proceedings for the recovery of any tax, net tax, penalty, interest or other amount payable or remittable by a person under this Part shall be commenced in a court

- (a) in the case of an amount that may be assessed under this Part, unless at the time the action is commenced the person has been or may be assessed for that amount; and
 - (b) in any other case, more than four years after the person became liable to pay or remit the amount.
- (3) **Penalties and interest on judgments.**—Where a judgment is obtained for any tax, net tax, penalty, interest or other amount payable or remittable under this Part, including a certificate registered under section 316, the provisions of this Part by which a penalty or interest is payable for failure to pay or remit the amount apply, with such modifications as the circumstances require, to failure to pay the judgment debt, and the penalty and interest are recoverable in like manner as the judgment debt. S.C. 1990, c. 45, s. 12.
- **314.** (1) **Security.**—The Minister may, if the Minister considers it advisable in a particular case, accept security in an amount and a form satisfactory to the Minister for payment of any amount that is or may become remittable or payable under this Part.
- (2) Security where objection or appeal.—Where a person objects to or appeals from an assessment, the Minister shall accept security, in an amount and a form satisfactory to the Minister, furnished by or on behalf of the person, for the payment of any amount that is in controversy.
- (3) Surrender of excess security.—Where a person who has furnished security, or on whose behalf security has been furnished, under this section requests in writing that the Minister surrender the security or any part thereof, the Minister shall surrender the security to the extent that the value thereof exceeds the amount, at the time the request is received by the Minister, of any tax, net tax, penalty, interest or other amount for the payment of which the security was furnished. S.C. 1990, c. 45, s. 12.
- **315.** (1) **Assessment before collection.**—The Minister may not take any collection action under sections 316 to 321 in respect of any amount payable or remittable by a person that may be assessed under this Part, other than interest or penalty computed at 6% per annum, unless the amount has been assessed.
- (2) **Payment of remainder.**—Where the Minister mails a notice of assessment to a person, any amount assessed then remaining unpaid is payable forthwith by the person to the Receiver General.
- (3) **Minister may postpone collection.**—The Minister may, subject to such terms and conditions as the Minister may stipulate, postpone collection action against a person in respect of all or any part of any amount assessed that is the subject of a dispute between the Minister and the person. S.C. 1990, c. 45, s. 12.
- **316.** (1) Certificates.—Any tax, net tax, penalty, interest or other amount payable or remittable by a person (in this section referred to as the "debtor") under this Part, or any part of any such amount, that has not been paid or remitted as and when required under this Part may be certified by the Minister as an amount payable by the debtor.
- (2) **Registration in court.**—On production to the Federal Court, a certificate made under subsection (1) in respect of a debtor shall be registered in the Court and when so registered has the same effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest and penalty thereon as provided under this Part to the day of payment and, for the purposes of any such proceedings, the certificate shall be deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty and enforceable as such.
 - (3) Costs.—All reasonable costs and charges incurred or paid in respect of the registra-

tion in the Court of a certificate made under subsection (1) or in respect of any proceedings taken to collect the amount certified are recoverable in like manner as if they had been included in the amount certified in the certificate when it was registered.

- (4) Charge on land.—A document (in this section referred to as a "memorial") that is issued by the Federal Court evidencing a certificate in respect of a debtor registered under subsection (2) may be filed, registered or otherwise recorded for the purpose of creating a charge or lien on or otherwise binding land in a province, or any interest therein, held by the debtor in the same manner as a document evidencing a judgment of the superior court of the province against a person for a debt owing by the person may be filed, registered or otherwise recorded in accordance with the law of the province to create a charge or lien on or otherwise bind land, or any interest therein, held by the person.
- (5) **Idem.**—Where a memorial has been filed, registered or otherwise recorded under subsection (4), a charge or lien is created on land in the province, or any interest therein, held by the debtor, or such land or interest is otherwise bound, in the same manner and to the same extent as if the memorial were a document evidencing a judgment of the superior court of the province.
- (6) **Proceedings in respect of memorial.** –Where a memorial of a certificate in respect of a debtor registered under subsection (2) is filed, registered or otherwise recorded under subsection (4), proceedings may be taken in respect thereof, including proceedings
 - (a) to enforce payment of the amount certified in the certificate, interest thereon and all costs and charges paid or incurred in respect of
 - (i) the filing, registration or other recording of the memorial, and
 - (ii) proceedings taken to collect the amount,
 - (b) to renew or otherwise prolong the effectiveness of the filing, registration or other recording of the memorial,
 - (c) to cancel or withdraw the memorial wholly or in respect of one or more parcels of land or interests in land affected by the memorial, or
 - (d) to postpone the effectiveness of the filing, registration or other recording of the memorial in favour of any right, charge or lien that has been or is intended to be filed, registered or otherwise recorded in respect of any land or interest in land affected by the memorial,

in the same manner and subject to the same restrictions and limitations as though the memorial were a document evidencing a judgment of the superior court of the province, except that, where in any such proceedings or as a condition precedent to any such proceedings any order, consent or ruling is required under the law of the province to be made or given by the superior court of the province or a judge or official thereof, a like order, consent or ruling may be made or given by the Federal Court or a judge or official thereof and, when so made or given, has the same effect for the purposes of the proceedings as though made or given by the superior court of the province or a judge or official thereof.

(7) Presentation of documents.—Where a memorial of a certificate registered under subsection (2) is presented for filing, registration or other recording under subsection (4), or any document relating to the memorial is presented for filing, registration or other recording for the purpose of any proceedings described in subsection (6), to any officer of a superior court of a province or to any official in the land registry system of a province, it shall be accepted for filing, registration or other recording as though it were a like document issued from the superior court of the province or prepared in respect of a document evidencing a judgment of

the superior court of the province for the purpose of like proceedings, as the case may be, except that, where the memorial or document is issued by the Federal Court or signed or certified by a judge or officer thereof, any affidavit, declaration or other evidence required under the law of the province to be provided with or to accompany the memorial or document in such proceedings shall be deemed to have been provided with or to have accompanied the memorial or document as so required.

- (8) Sale, etc.—Notwithstanding any law of Canada or of a province, a sheriff or other person shall not, without the written consent of the Minister, sell or otherwise dispose of any property, or publish any notice or otherwise advertise in respect of any sale or other disposition of any property pursuant to any process issued or charge or lien created in any proceeding to collect an amount certified in a certificate made under subsection (1), interest and penalty thereon and costs, but any property that would have been affected by such a process, charge or lien had such consent been given at the time the process was issued or the charge or lien was created, as the case may be, shall be bound, seized, attached, charged or otherwise affected as it would be had such consent been given at the time the process was issued or the charge or lien was created, as the case may be.
- (9) Completion of notices, etc.—Where information that is required to be set out by any sheriff or other person in a minute, notice or document required to be completed for any purpose cannot, by reason of subsection (8), be so set out, the sheriff or other person shall complete the minute, notice or document to the extent possible without such information and, when the consent of the Minister is given for the purpose of subsection (8), a further minute, notice or document setting out all the information shall be completed for the same purpose, and if the sheriff or other person complies with this subsection, the sheriff or other person shall be deemed to have complied with the Act, regulation or rule that requires the information to be so set out.
- (10) **Application for an order.**—Where a sheriff or other person is unable, by reason of subsection (8) or (9), to comply with any law or rule of court, the sheriff or other person shall be bound by such order as may be made by a judge of the Federal Court, on *ex parte* application by the Minister, for the purpose of giving effect to the proceeding, charge or lien.
- (11) **Details in certificates and memorials.**—Notwithstanding any law of Canada or of a province, in any certificate made under subsection (1) in respect of a debtor, in any memorial evidencing the certificate or in any writ or document issued for the purpose of collecting an amount certified, it is sufficient for all purposes
 - (a) to set out, as the amount payable by the debtor, the aggregate of amounts payable by the debtor without setting out the separate amounts making up that aggregate; and
 - (b) to refer to the rate of interest to be charged on the separate amounts making up the amount payable in general terms as interest at the prescribed rate under this Part applicable from time to time on amounts payable to the Receiver General, without indicating the specific rates of interest to be charged on each of the separate amounts or to be charged for any particular period of time. S.C. 1990, c. 45, s. 12.
- 317. (1) Garnishment.—Where the Minister has knowledge or suspects that a person is or will be, within ninety days, liable to make a payment to another person who is liable to pay or remit an amount under this Part (in this subsection and subsections (2), (3) and (6) referred to as the "tax debtor"), the Minister may, by a letter served personally or by registered or certified mail, require the person to pay forthwith, where the moneys are immediately payable, and in any other case, as and when the moneys become payable, the moneys otherwise payable to the

tax debtor in whole or in part to the Receiver General on account of the tax debtor's liability under this Part.

- (2) **Idem.**—Without limiting the generality of subsection (1), where the Minister has knowledge or suspects that within ninety days
 - (a) a bank, credit union, trust company or other similar person (in this section referred to as the "institution") will loan or advance moneys to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by, a tax debtor who is indebted to the institution and who has granted security in respect of the indebtedness, or
 - (b) a person, other than an institution, will loan or advance moneys to, or make a payment on behalf of, a tax debtor who the Minister knows or suspects
 - (i) is employed by, or is engaged in providing services or property to, that person or was or will be, within ninety days, so employed or engaged, or
 - (ii) where that person is a corporation, is not dealing at arm's length with that person,

the Minister may, by a letter served personally or by registered or certified mail, require the institution or person, as the case may be, to pay in whole or in part to the Receiver General on account of the tax debtor's liability under this Part the moneys that would otherwise be so loaned, advanced or paid, and any moneys so paid to the Receiver General shall be deemed to have been loaned, advanced or paid, as the case may be, to the tax debtor.

- (3) **Idem.**—Notwithstanding any other provision of this Part, any other enactment of Canada other than the *Bankruptcy and Insolvency Act*, any enactment of a province or any law, where the Minister has knowledge or suspects that a particular person is or will become, within ninety days, liable to make a payment
 - (a) to a tax debtor, or
 - (b) to a secured creditor who has a right to receive the payment that, but for a security interest in favour of the secured creditor, would be payable to the tax debtor,

the Minister may, by a letter served personally or by registered mail, require the particular person to pay forthwith, where the moneys are immediately payable, and in any other case, as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General on account of the tax debtor's liability under this Part, and on receipt of that letter by the particular person, the amount of those moneys that is required by that letter to be paid to the Receiver General shall, notwithstanding any security interest in those moneys, become the property of Her Majesty in right of Canada to the extent of that liability as assessed by the Minister and shall be paid to the Receiver General in priority to any such security interest.

- (4) **Definitions.**—In subsection (3),
- "secured creditor".— "secured creditor" means a particular person who has a security interest in the property of another person or who acts for or on behalf of the particular person with respect to the security interest, and includes a trustee appointed under a trust deed relating to a security interest, a receiver or receiver-manager appointed by a secured creditor or by a court on the application of a secured creditor, a sequestrator and any other person performing a similar function;
- "security interest".—"security interest" means any interest in property that secures payment or performance of an obligation, and includes an interest created by or arising out of a debenture, mortgage, hypothec, lien, pledge, charge, deemed or actual trust, assignment

or encumbrance of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for.

- (5) **Effect of receipt.**—A receipt issued by the Minister for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.
- (6) Effect of requirement.—Where the Minister has, under this section, required a person to pay to the Receiver General on account of the liability under this Part of a tax debtor moneys otherwise payable by the person to the tax debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the requirement is applicable in respect of all such payments to be made by the person to the tax debtor until the liability under this Part is satisfied, and operates to require payments to the Receiver General out of each such payment of such amount as may be stipulated by the Minister in a letter served personally or by registered or certified mail.
- (7) Failure to comply.—Every person who fails to comply with a requirement under subsection (1), (3) or (6) is liable to pay to Her Majesty in right of Canada an amount equal to the amount that the person was required under subsection (1), (3) or (6), as the case may be, to pay to the Receiver General.
- (8) **Idem.**—Every institution or person that fails to comply with a requirement under subsection (2) with respect to moneys to be loaned, advanced or paid is liable to pay to Her Majesty in right of Canada an amount equal to the lesser of
 - (a) the aggregate of moneys so loaned, advanced or paid, and
 - (b) the amount that the institution or person was required under that subsection to pay to the Receiver General.
- (9) Assessment.—The Minister may assess any person for any amount payable under this section by the person to the Receiver General and, where the Minister sends a notice of assessment, sections 296 to 311 apply, with such modifications as the circumstances require.
- (10) **Time limit.**—An assessment of an amount payable under this section by a person to the Receiver General shall not be made more than four years after the letter from the Minister requiring the payment is served on the person.
- (11) **Effect of payment as required.**—Where an amount that would otherwise have been payable to or on behalf of the tax debtor is paid by a person to the Receiver General pursuant to a letter from the Minister served on the person under this section or pursuant to an assessment under subsection (9), the person shall be deemed, for all purposes, to have paid the amount to or on behalf of the tax debtor. S.C. 1990, c. 45, s. 12; S.C. 1992, c. 27, s. 90 (1) (p); S.C. 1993, c. 27, s. 133.
- **318. Recovery by deduction or set-off.**—Where a person is indebted to Her Majesty in right of Canada under this Part, the Minister may require the retention by way of deduction or set-off of such amount as the Minister may specify out of any amount that may be or become payable to that person by Her Majesty in right of Canada. S.C. 1990, c. 45, s. 12.
- 319. Acquisition of debtor's property.—For the purpose of collecting debts owed by a person to Her Majesty in right of Canada under this Part, the Minister may purchase or otherwise acquire any interest in the person's property that the Minister is given a right to acquire in legal proceedings or under a court order or that is offered for sale or redemption, and may dispose of any interest so acquired in such manner as the Minister considers reasonable. S.C. 1990, c. 45, s. 12.
 - 320. (1) Moneys seized from tax debtor.—Where the Minister has knowledge or

suspects that a person is holding moneys that were seized by a police officer, in the course of administering or enforcing the criminal law of Canada, from another person who is liable to make a payment under this Part (in this section referred to as the "tax debtor") and that are restorable to the tax debtor, the Minister may, by a letter served personally or by registered or certified mail, require that person to turn over the moneys otherwise restorable to the tax debtor, in whole or in part, to the Receiver General on account of the tax debtor's liability under this Part.

- (2) **Receipt of Minister.**—A receipt issued by the Minister for moneys turned over as required under this section is a good and sufficient discharge of the requirement to restore the moneys to the tax debtor to the extent of the amount so turned over. S.C. 1990, c. 45, s. 12.
- **321.** (1) **Seizure of chattels.**—Where a person fails to pay an amount as required under this Part, the Minister may give thirty days notice to the person by registered or certified mail addressed to the person's latest known address of the Minister's intention to direct that the person's goods and chattels be seized and sold, and, if the person fails to make the payment before the expiration of the thirty days, the Minister may issue a certificate of the failure and direct that the person's goods and chattels be seized.
- (2) **Idem.**—Property seized under this section shall be kept for ten days at the expense and risk of the owner and, if the owner does not pay the amount due together with all expenses within the ten days, the property seized shall be sold by public auction.
- (3) **Idem.**—Except in the case of perishable goods, notice of a sale referred to in subsection (2) setting out the time and place thereof, together with a general description of the property to be sold shall, a reasonable time before the goods are sold, be published at least once in one or more newspapers of general local circulation.
- (4) **Idem.**—Any surplus resulting from a sale referred to in subsection (2), after deduction of the amount owing and all expenses, shall be paid or returned to the owner of the property seized.
- (5) **Idem.**—Such goods and chattels of any person in default as would be exempt from seizure under a writ of execution issued out of a superior court of the province in which the seizure is made are exempt from seizure under this section. S.C. 1990, c. 45, s. 12.
- **322.** (1) **Person leaving Canada or defaulting.**—Where the Minister suspects that a person has left or is about to leave Canada, the Minister may, before the day otherwise fixed for payment, by notice to the person served personally or sent by registered or certified mail addressed to the person's latest known address, demand payment of all taxes, net tax, penalties, interest and amounts under section 264 for which the person is liable or would be liable if the time for payment had arrived, and the same shall be paid forthwith notwithstanding any other provision of this Part.
- (2) **Idem.**—Where a person fails to pay tax, net tax, penalties, interest or amounts under section 264 demanded under this section as required, the Minister may direct that the goods and chattels of the person be seized and subsections 321(2) to (5) are thereupon applicable, with such modifications as the circumstances require, S.C. 1990, c. 45, s. 12.
- **323.** (1) **Liability of directors.** Where a corporation fails to remit an amount of net tax as required under subsection 228(2), the directors of the corporation at the time the corporation was required to remit the amount are jointly and severally liable, together with the corporation, to pay that amount and any interest thereon or penalties relating thereto.
 - (2) **Limitations.**—A director of a corporation is not liable under subsection (1) unless (a) a certificate for the amount of the corporation's hability referred to in that subsection

has been registered in the Federal Court under section 316 and execution for that amount has been returned unsatisfied in whole or in part;

- (b) the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the corporation's liability referred to in subsection
- (1) has been proved within six months after the earlier of the date of commencement of the proceedings and the date of dissolution; or
- (c) the corporation has made an assignment or a receiving order has been made against it under the *Bankruptcy and Insolvency Act* and a claim for the amount of the corporation's liability referred to in subsection (1) has been proved within six months after the date of the assignment or receiving order.
- (3) **Diligence.**—A director of a corporation is not liable for a failure under subsection (1) where the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.
- (4) Assessment.—The Minister may assess any person for any amount payable by the person under this section and, where the Minister sends a notice of assessment, sections 296 to 311 apply, with such modifications as the circumstances require.
- (5) **Time limit.**—An assessment under subsection (4) of any amount payable by a person who is a director of a corporation shall not be made more than two years after the person last ceased to be a director of the corporation.
- (6) Amount recoverable.—Where execution referred to in paragraph (2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.
- (7) **Preference.**—Where a director of a corporation pays an amount in respect of a corporation's liability referred to in subsection (1) that is proved in liquidation, dissolution or bankruptcy proceedings, the director is entitled to any preference that Her Majesty in right of Canada would have been entitled to had the amount not been so paid and, where a certificate that relates to the amount has been registered, the director is entitled to an assignment of the certificate to the extent of the director's payment, which assignment the Minister is empowered to make.
- (8) Contribution.—A director who satisfies a claim under this section is entitled to contribution from the other directors who were liable for the claim. S.C. 1990, c. 45, s. 12; S.C. 1992, c. 27, s. 90(1)(p).
- **324.** (1) **Compliance by unincorporated bodies.**—Where any amount is required to be paid or remitted or any other thing is required to be done by or under this Part or the regulations made under this Part by a person (in this section referred to as the "body") that is not an individual, corporation, partnership, trust or estate, it shall be the joint and several liability and responsibility of
 - (a) every member of the body holding office as president, chairperson, treasurer, secretary or similar officer of the body,
 - (b) where there are no such officers of the body, every member of any committee having management of the affairs of the body, and
 - (c) where there are no such officers of the body and no such committee, every member of the body,

to pay or remit that amount or to comply with the requirement, and if the amount is paid or remitted or the requirement is fulfilled by an officer of the body, a member of such a committee or a member of the body, it shall be considered as compliance with the requirement.

- (2) **Assessment.**—The Minister may assess any person for any amount for which the person is liable under this section and, where the Minister sends a notice of assessment, sections 296 to 311 are applicable, with such modifications as the circumstances require.
 - (3) Limitation.—An assessment of a person under subsection (2) shall not
 - (a) include any amount that the body was liable to pay or remit before the day the person became jointly and severally liable;
 - (b) include any amount that the body became liable to pay or remit after the day the person ceased to be jointly and severally liable; or
 - (c) be made more than two years after the day the person ceased to be jointly and severally liable unless the person was grossly negligent in the carrying out of any duty or obligation imposed on the body by or under this Part or made, or participated in, assented to or acquiesced in the making of, a false statement or omission in a return, application, form, certificate, statement, invoice or answer made by the body. S.C. 1990, c. 45, s. 12.
- 325. (1) Tax liability re transfers not at arm's length.—Where at any time a person transfers property, either directly or indirectly, by means of a trust or by any other means, to
 - (a) the transferor's spouse or an individual who has since become the transferor's spouse,
 - (b) an individual who was under eighteen years of age, or
 - (c) another person with whom the transferor was not dealing at arm's length,

the transferee and transferor are jointly and severally liable to pay under this Part an amount equal to the lesser of

(d) the amount determined by the formula

A - B

where

- A is the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given by the transferee for the transfer of the property, and
- B is the amount, if any, by which the amount assessed the transferee under subsection 160(2) of the *Income Tax Act* in respect of the property exceeds the amount paid by the transferor in respect of the amount so assessed, and
- (e) the total of all amounts each of which is
 - (i) an amount that the transferor is liable to pay or remit under this Part for the reporting period of the transferor that includes that time or any preceding reporting period of the transferor, or
 - (ii) interest or penalty for which the transferor is liable as of that time,

but nothing in this subsection limits the liability of the transferor under any provision of this Part.

- (2) Assessment.—The Minister may at any time assess a transferee in respect of any amount payable by reason of this section, and the provisions of sections 296 to 311 apply, with such modifications as the circumstances require.
- (3) **Rules applicable.**—Where a transferor and transferee have, by reason of subsection (1), become jointly and severally liable in respect of part or all of the liability of the transferor under this Part, the following rules apply:

- (a) a payment by the transferee on account of the transferee's liability shall, to the extent thereof, discharge the joint liability; and
- (b) a payment by the transferor on account of the transferor's liability only discharges the transferee's liability to the extent that the payment operates to reduce the transferor's liability to an amount less than the amount in respect of which the transferee was, by subsection (1), made jointly and severally liable.
- (4) **Special transfers to spouse.**—Notwithstanding subsection (1), where at any time an individual transfers property to the individual's spouse under a decree, order or judgment of a competent tribunal or under a written separation agreement and, at that time, the individual and the individual's spouse were separated and living apart as a result of a breakdown of their marriage, for the purposes of paragraph (1)(d), the fair market value at that time of the property so transferred shall be deemed to be nil, but nothing in this subsection limits the liability of the individual under any provision of this Part.
- (5) **Meaning of "property".**—In this section, "property" includes money. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 134.

Subdivision f. Offences

- **326.** (1) **Offences.**—Every person who fails to file or make a return as and when required by or under this Part or a regulation made under this Part or who fails to comply with an obligation under subsection 286(2) or section 288, 289 or 292 or an order made under subsection (2) is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to
 - (a) a fine of not less than \$1,000 and not more than \$25,000; or
 - (b) both a fine referred to in paragraph (a) and imprisonment for a term not exceeding twelve months.
- (2) Compliance orders.—Where a person has been convicted by a court of an offence under subsection (1) for a failure to comply with a provision of this Part or a regulation made under this Part, the court may make such order as it deems proper in order to enforce compliance with the provision.
- (3) **Saving.**—A person who is convicted under this section of failing to comply with a provision of this Part or a regulation made under this Part is not liable to pay a penalty imposed under section 283 or 284 for the same failure, unless a notice of assessment for the penalty was issued before the information or complaint giving rise to the conviction was laid or made. S.C. 1990, c. 45, s. 12.

327. (1) Offences.—Every person who has

- (a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, application, certificate, statement, document or answer filed or made as required by or under this Part or the regulations made under this Part,
- (b) for the purpose of evading payment or remittance of any tax or net tax imposed under this Part, or obtaining a rebate to which the person is not entitled under this Part,
 - (i) destroyed, altered, mutilated, secreted or otherwise disposed of any documents of a person, or
- (ii) made, or assented to or acquiesced in the making of, false or deceptive entries, or omitted, or assented to or acquiesced in the omission, to enter a material particular in the documents of a person,

- (c) wilfully, in any manner, evaded or attempted to evade compliance with this Part or payment or remittance of tax or net tax imposed under this Part,
- (d) wilfully, in any manner, obtained or attempted to obtain a rebate or refund to which the person is not entitled under this Part, or
- (e) conspired with any person to commit an offence described in any of paragraphs (a) to (c),

is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

- (f) a fine of not less than 50%, and not more than 200%, of the amount of the tax or net tax that was sought to be evaded, or of the rebate or refund sought, or, where the amount that was sought to be evaded cannot be ascertained, a fine of not less than \$1,000 and not more than \$25,000, or
- (g) both a fine referred to in paragraph (f) and imprisonment for a term not exceeding two years.
- (2) **Prosecution on indictment.**—Every person who is charged with an offence described in subsection (1) may, at the election of the Attorney General of Canada, be prosecuted on indictment and, if convicted, is, in addition to any penalty otherwise provided, liable to
 - (a) a fine of not less than 100%, and not more than 200%, of the amount of the tax or net tax that was sought to be evaded, or of the rebate or refund sought, or, where the amount that was sought to be evaded cannot be ascertained, a fine of not less than \$2,000 and not more than \$25,000, or
 - (b) both a fine referred to in paragraph (a) and imprisonment for a term not exceeding five years.
- (3) **Penalty on conviction.** —A person who is convicted of an offence under this section is not liable to pay a penalty imposed under section 284 for the same evasion or attempt, unless a notice of assessment for that penalty was issued before the information or complaint giving rise to the conviction was laid or made.
- (4) **Stay of appeal.**—Where, in any appeal under this Part, substantially the same facts are at issue as those that are at issue in a prosecution under this section, the Minister may file a stay of proceedings with the Tax Court and thereupon the proceedings before the Tax Court are stayed pending final determination of the outcome of the prosecution. S.C. 1990, c. 45, s. 12.
 - 328. (1) Offence re confidential information.—Every person who
 - (a) contravenes subsection 295(2), or
 - (b) knowingly contravenes an order made under subsection 295(5.1)

is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding twelve months, or to both.

- (2) **Idem.**—Every person
- (a) to whom confidential information has been provided for a particular purpose pursuant to paragraph 295(5)(b), (c) or (g), or
- (b) who is an official to whom confidential information has been provided for a particular purpose pursuant to paragraph 295(5)(a), (d), (e) or (h),

and who for any other purpose knowingly uses, provides to any person, allows the provision to any person of, or allows any person access to, that information is guilty of an offence and liable

on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding twelve months, or to both.

- (3) **Definitions.**—In subsections (1) and (2), "official" and "confidential information" have the meanings assigned by subsection 295(1). S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 135.
- **329.** (1) **Failure to pay, collect or remit taxes.**—Every person who wilfully fails to pay, collect or remit tax or net tax as and when required under this Part is guilty of an offence punishable on summary conviction and liable, in addition to any penalty or interest otherwise provided, to
 - (a) a fine not exceeding the aggregate of \$1,000 and an amount equal to 20% of the amount of tax or net tax that should have been paid, collected or remitted; or
 - (b) both a fine referred to in paragraph (a) and imprisonment for a term not exceeding six months.
- (2) **General offence.**—Every person who fails to comply with any provision of this Part for which no other penalty is provided under this Subdivision is guilty of an offence punishable on summary conviction and liable to a fine not exceeding \$1,000. S.C. 1990, c. 45, s. 12.
- **330.** Officers of corporations, etc.—Where a person other than an individual is guilty of an offence under this Part, every officer, director or agent of the person who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and liable on conviction to the punishment provided for the offence, whether the person has been prosecuted or convicted. S.C. 1990, c. 45, s. 12.
- **331.** Power to decrease punishment.—Notwithstanding the *Criminal Code* or any other law, the court has, in any prosecution or proceeding under this Part, neither the power to impose less than the minimum fine or imprisonment fixed by this Part nor the power to suspend sentence. S.C. 1990, c. 45, s. 12.
- 332. (1) Information or complaint.—An information or complaint under this Part may be laid or made by any officer of the Department, by a member of the Royal Canadian Mounted Police or by any person authorized to do so by the Minister and, where an information or complaint purports to have been laid or made under this Part, it shall be deemed to have been laid or made by a person so authorized by the Minister and shall not be called in question for lack of authority of the informant or complainant, except by the Minister or a person acting for the Minister or for Her Majesty in right of Canada.
- (2) **Two or more offences.**—An information or complaint in respect of an offence under this Part may be for one or more offences and no information, complaint, warrant, conviction or other proceeding in a prosecution under this Part is objectionable or insufficient by reason of the fact that it relates to two or more offences.
- (3) **Territorial jurisdiction.**—An information or complaint in respect of an offence under this Part may be heard, tried or determined by any court where the accused is resident, carrying on a commercial activity, found or apprehended or is in custody within its territorial jurisdiction notwithstanding the matter of the information or complaint did not arise within its territorial jurisdiction.
- (4) **Limitation of prosecutions.**—An information or complaint under the provisions of the *Criminal Code* relating to summary convictions, in respect of an offence under this Part, may be laid or made on or before the day that is eight years after the day the matter of the information or complaint arose. S.C. 1990, c. 45, s. 12.

Subdivision g. Evidence and procedure

- **333.** (1) **Service.**—Where the Minister is authorized or required to serve, issue or send a notice or other document on or to a person that
 - (a) is a partnership, the notice or document may be addressed to the name of the partnership;
 - (b) is a union, the notice or document may be addressed to the name of the union;
 - (c) is a society, club, association, organization or other body, the notice or document may be addressed to the name of the body; and
 - (d) carries on business under a name or style other than the name of the person, the notice or document may be addressed to the name or style under which the person carries on business.
- (2) **Personal service.**—Where the Minister is authorized or required to serve, issue or send a notice or other document on or to a person that carries on a business, the notice or document is deemed to have been validly served, issued or sent if it is
 - (a) where the person is a partnership, served personally on one of the partners or left with an adult person employed at the place of business of the partnership; or
 - (b) left with an adult person employed at the place of business of the person. S.C. 1990, c. 45, s. 12.
- **334.** (1) **Sending by mail.**—For the purposes of this Part and subject to subsection (2), anything sent by first class mail or its equivalent shall be deemed to have been received by the person to whom it was sent on the day it was mailed.
- (2) Paying or remitting by mail.—A person who is required under this Part to pay or remit an amount shall not be considered as having paid or remitted the amount until it is received by the Receiver General. S.C. 1990, c. 45, s. 12.
- 335. (1) Proof of service by mail.—Where, under this Part or a regulation made under this Part, provision is made for sending by mail a request for information, a notice or a demand, an affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has knowledge of the facts in the particular case, that such a request, notice or demand was sent by registered or certified mail on a named day to the person to whom it was addressed (indicating the address), and that the officer identifies as exhibits attached to the affidavit the post office certificate of registration of the letter or a true copy of the relevant portion thereof and a true copy of the request, notice or demand, is evidence of the sending and of the request, notice or demand.
- (2) **Proof of personal service.**—Where, under this Part or a regulation made under this Part, provision is made for personal service of a request for information, a notice or a demand, an affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has knowledge of the facts in the particular case, that such a request, notice or demand was served personally on a named day on the person to whom it was directed, and that the officer identifies as an exhibit attached to the affidavit a true copy of the request, notice or demand, is evidence of the personal service and of the request, notice or demand.
- (3) **Proof of failure to comply.** —Where, under this Part or a regulation made under this Part, a person is required to make a return, an application, a statement, an answer or a certificate, an affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate

records and that after a careful examination and search of the records the officer has been unable to find in a given case that the return, application, statement, answer or certificate, as the case may be, has been made by that person, is evidence that in that case the person did not make the return, application, statement, answer or certificate, as the case may be.

- (4) **Proof of time of compliance.**—Where, under this Part or a regulation made under this Part, a person is required to make a return, an application, a statement, an answer or a certificate, an affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that after careful examination of the records the officer has found that the return, application, statement, answer or certificate, as the case may be, was filed or made on a particular day, is evidence that it was filed or made on that day and not before.
- (5) **Proof of documents.**—An affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that a document annexed to it is a document or true copy of a document made by or on behalf of the Minister or a person exercising the powers of the Minister or by or on behalf of a person, is evidence of the nature and contents of the document.
- (6) **Proof of no appeal.**—An affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and has knowledge of the practice of the Department and that an examination of the records shows that a notice of assessment was mailed or otherwise sent to a person on a particular day under this Part and that, after careful examination and search of the records, the officer has been unable to find that a notice of objection or of appeal from the assessment, as the case may be, was received within the time allowed therefor, is evidence of the statements contained therein.
- (7) **Presumption.**—Where evidence is offered under this section by an affidavit from which it appears that the person making the affidavit is an officer of the Department, it is not necessary to prove the signature of the person or that the person is such an officer, nor is it necessary to prove the signature or official character of the person before whom the affidavit was sworn.
- (8) **Proof of documents.**—Every document purporting to have been executed under or in the course of the administration or enforcement of this Part over the name in writing of the Minister, the Deputy Minister or an officer authorized to exercise the powers or perform the duties of the Minister under this Part, shall be deemed to be a document signed, made and issued by the Minister, the Deputy Minister or the officer, unless it has been called in question by the Minister or a person acting for the Minister or for Her Majesty in right of Canada.
 - (9) [Repealed]
- (10) **Mailing date.**—Where any notice or demand that the Minister is required or authorized under this Part to send or mail to a person is mailed to the person, the day of mailing shall be presumed to be the date of the notice or demand.
- (11) **Date when assessment made.**—Where a notice of assessment has been sent by the Minister as required under this Part, the assessment shall be deemed to have been made on the day of mailing of the notice of assessment.
- (12) **Proof of return.**—In any prosecution for an offence under this Part, the production of a return, an application, a certificate, a statement or an answer required under this Part or a regulation made under this Part, purporting to have been filed or delivered by or on behalf of the person charged with the offence or to have been made or signed by or on behalf of that person, is evidence that the return, application, certificate, statement or answer, as the case may

be, was filed or delivered by or on behalf of that person or was made or signed by or on behalf of that person.

- (13) **Idem.**—In any proceedings under this Part, the production of a return, an application, a certificate, a statement or an answer required under this Part or a regulation made under this Part, purporting to have been filed, delivered, made or signed by or on behalf of a person, is evidence that the return, application, certificate, statement or answer, as the case may be, was filed, delivered, made or signed by or on behalf of that person.
- (14) **Idem.**—In any prosecution for an offence under this Part, an affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that an examination of the records shows that an amount required under this Part to be remitted to the Receiver General on account of tax, net tax, penalty or interest has not been received by the Receiver General, is evidence of the statements contained therein. S.C. 1990, c. 45, s. 12; S.C. 1994, c. 13, s. 9.

DIVISION IX TRANSITIONAL PROVISIONS

Real Property

336. (1) Transfer of real property before 1991.—Where

- (a) a taxable supply by way of sale of real property is made to a person, and
- (b) ownership or possession of the property is transferred under the agreement for that supply to the person before 1991,

no tax is payable in respect of the supply.

- (2) Transfer of single unit residential complex after 1990.—Where
- (a) a taxable supply by way of sale of a single unit residential complex in Canada is made to an individual under an agreement in writing entered into before October 14, 1989 between the supplier and the individual,
- (b) ownership and possession of the complex are not transferred to the individual under the agreement before 1991, and
- (c) possession of the complex is transferred to the individual under the agreement at any time after 1990,

the following rules apply:

- (d) no tax is payable by the individual in respect of the supply,
- (e) subsection 191(1) does not apply in respect of the complex before possession thereof is transferred to the individual,
- (f) where the individual is a builder of the complex,
 - (i) if the individual is a builder of the complex only because of paragraph (d) of the definition "builder" in subsection 123(1),
 - (A) the individual shall be deemed not to be a builder of the complex, and
 - (B) for the purposes of determining whether any other person who, after that time, makes a supply of the complex or an interest therein is a builder of the complex, the complex shall be deemed to have been occupied at that time by an individual as a place of residence, and

- (ii) in any other case, for the purposes of determining an input tax credit of the individual, the individual shall be deemed to have paid, at that time, tax in respect of the supply equal to 4% of the consideration for the supply,
- (g) the supplier shall be deemed to have collected, at that time, tax in respect of the supply equal to
 - (i) 4% of the consideration for the supply where the complex was, on January 1, 1991, not more than 20% completed,
 - (ii) 2.5% of the consideration for the supply where the complex was, on January 1, 1991, more than 20% completed and not more than 60% completed,
 - (iii) 1% of the consideration for the supply where the complex was, on January 1, 1991, more than 60% completed and not more than 90% completed, and
 - (iv) 0% of the consideration for the supply where the complex was, on January 1, 1991, more than 90% completed, and
- (h) for the purposes of section 121, the complex shall be deemed not to be a specified single unit residential complex.
- (3) Transfer of residential condominium unit after 1990.—Where
- (a) a taxable supply by way of sale of a residential condominium unit in Canada is made to a person under an agreement in writing entered into before October 14, 1989 between the supplier and the person,
- (b) ownership and possession of the unit are not transferred to the person under the agreement before 1991, and
- (c) possession of the unit is transferred to the person under the agreement at any time after 1990,

the following rules apply:

- (d) no tax is payable by the person in respect of the supply,
- (e) subsection 191(1) does not apply in respect of the unit before possession thereof is transferred to the person,
- (f) where the person is a builder of the unit,
 - (i) if the person is a builder of the unit only because of paragraph (d) of the definition "builder" in subsection 123(1),
 - (A) the person shall be deemed not to be a builder of the unit, and
 - (B) for the purposes of determining whether any other person who, after that time, makes a supply of the unit or an interest therein is a builder of the unit, the condominium complex in which the unit is located shall be deemed to have been registered at that time as a condominium and the unit shall be deemed to have been occupied at that time by an individual as a place of residence, and
 - (ii) in any other case, for the purposes of determining an input tax credit of the person, the person shall be deemed to have paid, at that time, tax in respect of the supply equal to 4% of the consideration for the supply, and
- (g) the supplier shall be deemed to have collected, at that time, tax in respect of the supply equal to 4% of the consideration for the supply.
- (4) Transfer of condominium complex after 1990.—Where
- (a) a taxable supply by way of sale of a condominium complex in Canada is made to a

person under an agreement in writing entered into before October 14, 1989 between the supplier and the person,

- (b) ownership and possession of the complex are not transferred to the person under the agreement before 1991, and
- (c) at any time after 1990, ownership of the complex is transferred to the person under the agreement or the complex is registered as a condominium,

the following rules apply:

- (d) no tax is payable by the person in respect of the supply,
- (e) subsection 191(1) does not apply in respect of any residential condominium unit located in the complex before ownership of the complex is transferred to the person,
- (f) where the person is a builder of the complex,
 - (i) if the person is a builder of the complex only because of paragraph (d) of the definition "builder" in subsection 123(1),
 - (A) the person shall be deemed not to be a builder of the complex or of any residential condominium unit located in the complex, and
 - (B) for the purposes of determining whether any other person who, after that time, makes a supply of the complex, a residential condominium unit located in the complex or an interest in the complex or unit is a builder of the complex or of any unit located in the complex, the complex shall be deemed to have been registered at that time as a condominium and each of the units shall be deemed to have been occupied at that time by an individual as a place of residence, and
 - (ii) in any other case, for the purposes of determining an input tax credit of the person, the person shall be deemed to have paid, at that time, tax in respect of the supply equal to 4% of the consideration for the supply, and
- (g) the supplier shall be deemed to have collected, on the earlier of
 - (i) the day ownership of the complex is transferred to the person, and
- (ii) the day that is sixty days after the day the complex is registered as a condominium, tax in respect of the supply equal to 4% of the consideration for the supply. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 136.

Personal Property and Services

- **337.** (1) **Transfer of personal property before 1991.** Where a taxable supply by way of sale of tangible personal property is made to a person, to the extent that
 - (a) the property is delivered to the person before 1991, or
 - (b) ownership of the property is transferred to the person before 1991,
- no tax is payable in respect of any consideration for the supply that is paid or becomes due before May 1991.
- (1.1) Conditional sales and instalment sales.—No tax is payable in respect of a supply by way of sale (other than a sale resulting from the exercise, after 1990, of an option to purchase contained in a lease, licence or similar arrangement) of tangible personal property to the extent that the property was delivered, or ownership thereof was transferred, to the recipient before 1991 in accordance with the terms of an agreement in writing entered into before 1991 for the supply.

- (2) Continuous supplies.—To the extent that consideration for a supply of electricity, natural gas, steam or any property or service that
 - (a) in the case of property, is delivered or made available, or
 - (b) in the case of a service, is performed or made available

on a continuous basis by means of a wire, pipeline or other conduit is paid or becomes due before May 1991, no tax is payable in respect of the property or service delivered, performed or made available, as the case may be, to the recipient before 1991.

- (3) **Idem.**—To the extent that consideration for a taxable supply in Canada of electricity, natural gas, steam or any property or service that
 - (a) in the case of property, is delivered or made available, or
 - (b) in the case of a service, is performed or made available

on a continuous basis by means of a wire, pipeline or other conduit becomes due after April 1991, or is paid after April 1991 without becoming due, and at a time when the supplier is a registrant, tax is payable in respect of that consideration regardless of when the property or service is delivered, performed or made available, as the case may be.

- (4) Payment before 1991 for subscription.—No tax is payable in respect of any consideration for a taxable supply of a subscription for newspapers, magazines or other publications published periodically that is paid before 1991.
- (5) **Supplies after 1990.**—Except where subsection (4) applies, where a taxable supply of tangible personal property by way of sale is made, any consideration (other than an instalment payable under a contract in respect of which subsection 118(3) or (4) applies) that becomes due or is paid, without becoming due, after August 1990 and before 1991 for property that is not delivered to the recipient and ownership of which is not transferred to the recipient before 1991 shall be deemed to have become due on January 1, 1991 and not to have been paid before 1991.
- (6) **Idem.**—Subject to subsections (2) and (4) and 341(1), 342(1) and 343(1), where a taxable supply of tangible personal property by way of sale or of a service is made in Canada to a person other than a consumer by a supplier in the ordinary course of a business, to the extent that any consideration (other than an instalment payable under a contract in respect of which subsection 118(3) or (4) applies) became due or was paid without having become due after August 1989 and before September 1990 for property that was not delivered to the person and the ownership of which was not transferred to the person before 1991 or for any of the service that was not performed before 1991, tax is payable in respect of that consideration and the person shall, on or before April 1, 1991, file with the Minister in prescribed manner a return in prescribed form containing prescribed information and remit that tax to the Receiver General.
- (7) **Prepaid supplies to consumers.**—Where a person makes a taxable supply by way of sale to a consumer of property that is a specified property the consideration for which exceeds \$5,000 or that is a motor vehicle, ownership and possession of the property are transferred to the consumer under the agreement for the supply after 1990, and all or part of the consideration for the supply is paid or becomes due before September 1, 1990, the following rules apply:
 - (a) the amount of any rebate under section 120 to which the person is entitled, or of any input tax credit of the person, in respect of the property shall be deemed to be the proportion of the rebate or input tax credit otherwise determined that the total of all amounts that became due, or were paid without becoming due, after August 1990 as consideration for the supply of the property to the consumer is of the total consideration for that supply; and

- (b) where the person is a licensed manufacturer or a licensed wholesaler under Part VI who would, if the property were delivered to the consumer before 1991, be required to pay tax under that Part in respect of the property, the person shall be deemed
 - (i) to have made and received, on January 1, 1991, a particular taxable supply of the property for consideration equal to the consideration for the supply of the property to the consumer, and
 - (ii) to have paid as a recipient and to have collected as a supplier, on January 1, 1991, tax in respect of the particular supply.
- (8) **Meaning of "specified property".**—For the purposes of subsection (7), "specified property" means property in respect of which a person would be required to pay tax under paragraph 50(1)(a) if the person were a licensed manufacturer of the property under Part VI and the person had sold and delivered the property to a consumer in Canada in 1990.
- (9) Goods returned after 1990.—Except where section 176 applies, where a person makes a taxable supply (other than a zero-rated supply) by way of sale of tangible personal property that is delivered to a recipient, or ownership of which is transferred to a recipient, before 1991 and the recipient returns the property to the person after 1990 and at any time receives a refund of, or credit for, all or part of the consideration for the supply,
 - (a) where the person is a registrant at that time, an amount equal to the tax fraction of the refund or credit may be deducted in determining the net tax of the person for the reporting period of the person that includes that time; and
 - (b) where the recipient is a registrant at that time, the amount determined under paragraph (a) shall be added in determining the net tax of the recipient for the reporting period of the recipient that includes that time, to the extent that the amount would have been deductible in determining the net tax of the recipient for that period if in that period the recipient had acquired the property and paid that amount as tax in respect of the property.
- (10) **Supply completed.**—Where all or part of the consideration for a taxable supply by way of sale of tangible personal property becomes due or is paid without becoming due after April 1991 and ownership or possession of the property was transferred before 1991 to the recipient under the agreement for the supply,
 - (a) where paragraph 168(3)(a) applies, ownership and possession of the property, and
 - (b) where paragraph 168(3)(b) applies, ownership of the property,
- shall, for the purposes of section 168, be deemed to have been transferred to the recipient in April 1991.
- (11) **Application.**—This section does not apply to a supply to which section 338 applies. **S.C.** 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 137.
- **338.** (1) **Budget arrangements.** Where a supply of property or a service (other than a subscription for newspapers, magazines or other publications published periodically) is made and the consideration for the supply of the property or service delivered, performed or made available during any period beginning before 1991 and ending after 1990 is paid by the recipient under a budget payment arrangement with a reconciliation of the payments to take place at or after the end of the period and before 1992, at the time the supplier issues an invoice for the reconciliation of the payments, the supplier shall determine the positive or negative amount determined by the formula

A - B

- A is the tax that would be payable by the recipient for the part of the property or service supplied during the period that was delivered, performed or made available after 1990, if the consideration therefor had become due and been paid after 1990; and
- B is the total tax payable by the recipient in respect of the supply of the property or service delivered, performed or made available during the period.
- (2) Collection of tax.—Where the amount determined under subsection (1) in respect of a supply of property or a service is a positive amount and the supplier is a registrant, the supplier shall collect, and be deemed to have collected on the day the invoice for the reconciliation of payments is issued, that amount from the recipient as tax.
- (3) **Refund of excess.**—Where the amount determined under subsection (1) in respect of a supply of property or a service is a negative amount and the supplier is a registrant, the supplier shall refund or credit that amount to the recipient and issue a credit note for that amount in accordance with section 232.
- (4) Continuous supply.—Where a supply of property or a service, during any period for which the supplier issues an invoice for the supply, is made on a continuous basis by means of a wire, pipeline or other conduit and, because of the method of recording the delivery of the property or the provision of the service, the time at which the property or a part thereof is delivered, or the time at which the service or a part thereof is provided, cannot reasonably be determined, an equal part of the whole of the property delivered, or of the whole of the service provided, in the period shall, for the purposes of this section, be deemed to have been delivered or provided, as the case may be, on each day of the period. S.C. 1990, c. 45, s. 12.
- **339.** Progress payments.—Where a taxable supply is made under a contract to construct, renovate, alter or repair real property or a ship or other marine vessel,
 - (a) any consideration for the supply that becomes due or is paid without becoming due after August 1989 and before 1991 as a progress payment required under the contract shall be deemed, for the purposes of this Part, to have become due on January 1, 1991 and not to have been paid before 1991;
 - (b) no tax is payable in respect of any part of the consideration for the supply that may reasonably be attributed to property delivered and services performed under the contract before 1991; and
 - (c) where paragraph 168(3)(c) applies in respect of the supply, tax is payable in respect thereof and the construction, renovation, alteration or repair is substantially completed before December 1990, the construction, renovation, alteration or repair shall be deemed, for the purposes of this Part, to have been substantially completed on December 1, 1990 and not before that day, S.C. 1990, c. 45, s. 12.
- **340.** (1) **Prepayment of rent and royalties.**—Subject to subsection (3), where a taxable supply of property is made in Canada to a person by way of lease, licence or similar arrangement, any payment of consideration for the supply that became due after August 1990 and before 1991, or that was paid after August 1990 and before 1991 without becoming due, to the extent that the payment is rent, royalty or a similar payment attributable to a period after 1990, shall be deemed to have become due on January 1, 1991 and not to have been paid before 1991 and, where the supplier is a registrant, tax is payable in respect of the amount of consideration so deemed to have become due.
- (2) **Idem.**—Subject to subsection (3), where a taxable supply of property by way of lease, licence or similar arrangement is made in Canada to a person other than a consumer by a supplier in the ordinary course of a business, to the extent that any consideration for the supply

that became due after August 1989 and before September 1990 or was paid after August 1989 and before September 1990 without becoming due is rent, royalty or a similar payment that is attributable to a period after 1990, tax is payable in respect of that consideration and the person shall, on or before April 1, 1991, file with the Minister in prescribed manner a return in prescribed form containing prescribed information and remit the tax in respect of that consideration to the Receiver General.

- (3) **Rent, etc. paid before 1994 under certain leases.**—No tax is payable in respect of any consideration paid before 1994 under an agreement in writing entered into before 1991 for the supply by way of lease of property that is
 - (a) an automobile, or
 - (b) equipment for use by a medical practitioner or a practitioner (within the meanings assigned by section 1 of Part II of Schedule V) in supplying services in the course of practising the profession of the medical practitioner or practitioner, as the case may be.

and the possession of which is transferred to the recipient of the supply before 1991, to the extent that that consideration is rent or other payment under the agreement that is attributable to a period before 1994 or to the extent that that consideration is attributable to the acquisition of the property.

- (4) **Periods before 1991.**—Where a taxable supply of property is made to a person by way of lease, licence or similar arrangement, no tax is payable in respect of the consideration for the supply that became due before May 1991, or that was paid before May 1991 without becoming due, to the extent that the consideration is rent, royalty or a similar payment attributable to a period before 1991.
- (5) **Application.**—Subsections (1), (2) and (4) do not apply in respect of payments of consideration for the use of, or the right to use, intangible personal property where the amount of the payment is not dependent on the amount of the use of or production from, or the profit from the use of or production from, the property.
- (6) **Agreements before August 8, 1989.**—Where under an agreement in writing entered into before August 8, 1989
 - (a) a supply by way of lease of tangible personal property that is capital property of the supplier, or
 - (b) a supply by way of sub-lease of tangible personal property that is capital property of the person who supplied the property by way of lease to the sub-lessor.

is made to a person, no tax is payable in respect of any consideration for any supply of the property under the agreement.

- (7) Variation of agreement.—Where an agreement in writing is renewed after August 7, 1989 or is varied or altered after August 7, 1989 to vary or alter the term of the agreement or the property affected by the agreement, the agreement shall be deemed, for the purposes of subsection (6), to have been entered into after August 7, 1989. S.C. 1990, c. 45, s. 12; S.C. 1994, c. 9, s. 24.
- **340.1** (1) **Adjustments.** Where a person remits tax under subsection 337(6) or 340(2) calculated on the consideration or a part thereof for a taxable supply and that consideration or part thereof is subsequently reduced, to the extent that the person did not claim, and is not, but for this section, entitled to claim, an input tax credit or a rebate in respect of the portion of the tax that was calculated on the amount by which the consideration or part thereof was reduced, that portion shall be deemed, for the purposes of determining a rebate under section 261, to be an amount that was not payable or remittable by the person.

- (2) **Application.**—Subsection (1) does not apply in circumstances in which section 161 or 176 applies. S.C. 1993, c. 27, s. 138.
- **341.** (1) **Services before 1991.**—No tax is payable in respect of any consideration that is paid or becomes due before May 1991 for a supply of a service (other than a freight transportation service or a service that is the transportation of an individual) to a person if all or substantially all of the service was performed before 1991.
- (2) **Idem.**—Where all or substantially all of a service (other than a freight transportation service or a service that is the transportation of an individual) that is supplied to a person is not performed before 1991, no tax is payable in respect of any consideration for the supply that is paid or becomes due before May 1991 to the extent that that consideration relates to any part of the service that was performed before 1991.
- (3) Payments before 1991.—Subject to subsection 337(2), where any consideration for a taxable supply of a service (other than a freight transportation service or a service that is the transportation of an individual) is paid after August 1990 and before 1991 without having become due or becomes due after August 1990 and before 1991, that consideration shall be deemed to have become due on January 1, 1991 and not to have been paid before 1991.
- (4) **Memberships and admissions.**—For the purposes of this Division, a supply of a membership in a club, an organization or an association and a supply of an admission in respect of a place of amusement, a seminar, an activity or an event shall be deemed to be supplies of a service, but a supply of a right to acquire a membership in a club, an organization or an association shall be deemed to be a supply of property.
 - (5) Combined supply.—For the purposes of subsection 168(8), where
 - (a) any combination of service, personal property or real property (each of which is in this subsection referred to as an "element") is supplied,
 - (b) the consideration for each element is not separately identified, and
 - (c) no tax would be payable in respect of an element that is property the ownership or possession of which is transferred to the recipient before 1991 if that element were supplied separately,

the element mentioned in paragraph (c) shall be deemed to have been supplied separately from all of the other elements.

- (6) **Application.**—This section does not apply to a supply in respect of which section 338 applies. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 139.
- **341.1** (1) **Legal service performed before 1991.**—No tax is payable in respect of the consideration for a supply of a legal service to the extent that the consideration relates to any part of the service that was performed before 1991 and, under the agreement for the supply, does not become due
 - (a) until allowed, directed or ordered by a court; or
 - (b) until the completion or termination of the service provided by the supplier.
- (2) Service of representative, trustee, receiver or liquidator.—No tax is payable in respect of the consideration for a supply of a service of a personal representative in respect of the administration of an estate, or a service of a trustee, receiver or liquidator, to the extent that the consideration relates to any part of the service that was performed before 1991 and does not become due
 - (a) in the case of the service of a personal representative, until it is approved by all

beneficiaries of the estate or in accordance with the terms of the trust binding the personal representative;

- (b) in the case of the service of a trustee, until a date determined under the terms of the trust or an agreement in writing for the supply; or
- (c) in any case, until it is allowed, directed or ordered by a court.
- (3) **Idem.**—For the purposes of subsections (1) and (2), where substantially all of a service is performed before 1991, all of the service shall be deemed to have been performed before 1991. S.C. 1993, c. 27, s. 140.
- **342.** (1) **Transportation of individuals.**—No tax is payable in respect of a supply of a service that is the transportation of an individual (other than a service to which subsection (3) applies) where the service begins before 1991.
- (2) **Idem.**—Where any consideration for a supply of a service that is the transportation of an individual (other than a service to which subsection (3) applies) is paid after August 1990 and before 1991 without having become due or becomes due after August 1990 and before 1991, that consideration shall be deemed to have become due on January 1, 1991 and not to have been paid before 1991.
- (2.1) **Transportation pass before February 1991.**—No tax is payable in respect of a supply made by a person to an individual of a transportation pass that entitles the individual to transportation services during a period beginning before 1991 and ending before February 1991 without payment of consideration by the individual each time a supply of a transportation service is made to the individual.
- (3) Transportation pass.—Where a supply is made by a person to an individual of a transportation pass that entitles the individual to transportation services during a period beginning before 1991 and ending after January 1991 without payment of consideration by the individual each time a supply of a transportation service is made to the individual, and consideration for the pass becomes due after August 1990 and before May 1991 or is paid after August 1990 and before May 1991 without becoming due, the part of the consideration for the pass determined by the formula

$$A \times \frac{B}{C}$$

where

A is amount of the consideration for the pass,

B is the number of days in the period that are after 1990, and

C is the number of days in the period,

shall be deemed to have become due on January 1, 1991 and not to have been paid before 1991. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 141.

- **343.** (1) Freight transportation services.—Where one or more carriers make a supply of freight transportation services in respect of a continuous freight movement of tangible personal property and, before 1991, the shipper of the property transferred possession of the property to the first carrier engaged in the continuous freight movement, no tax is payable in respect of any consideration for the supply that is paid or becomes due before May 1991.
 - (2) Freight transportation services after 1990. Where
 - (a) one or more carriers make a supply in Canada of freight transportation services in respect of a continuous freight movement of tangible personal property.

- (b) the shipper of the property does not transfer possession of the property before 1991 to the first carrier engaged in the continuous freight movement, and
- (c) consideration for the supply is paid or becomes due after August 1990 and before 1991.

that consideration shall be deemed to have become due on January 1, 1991 and not to have been paid before 1991.

- (3) **Interpretation.**—For the purposes of this section, "carrier", "continuous freight movement", "freight transportation service" and "shipper" have the same meanings as in Part VII of Schedule VI. S.C. 1990, c. 45, s. 12.
- **344.** (1) **Meaning of "funeral services".**—In this section, "funeral services" includes the provision of a coffin, a headstone or any other property relating to the funeral, burial or cremation of an individual that is provided under an arrangement for the provision of funeral services.
 - (2) Funeral arrangements entered into before September 1990.—Where
 - (a) an arrangement for funeral services in respect of an individual is entered into in writing before September 1990,
 - (b) under the terms of the arrangement, the funds required to pay for the funeral services are held by a trustee who is responsible for acquiring funeral services in respect of the individual, and
 - (c) at the time the arrangement is entered into, it is reasonable to expect that all or a part of those funds will be advanced to the trustee before the individual's death,

no tax is payable by the trustee in respect of the supply to the trustee of funeral services under the arrangement.

- (3) **Idem.**—Where an arrangement for funeral services in respect of an individual is entered into in writing at any time before September 1990 and, at that time, it is reasonable to expect that all or a part of the consideration for the supply of the funeral services will be paid before the individual's death, no tax is payable in respect of any supply of funeral services under the arrangement. S.C. 1990, c. 45, s. 12; S.C. 1993, c. 27, s. 142.
- **345.** Lifetime memberships.—Notwithstanding subsections 341(1) to (3), where a supply of a membership is made
 - (a) to an individual for the lifetime of the individual, or
 - (b) to a person other than an individual for the lifetime of an individual designated by the person,

to the extent that the total of all amounts that were paid after August 1990 and before 1991 as or on account of consideration for the supply exceeds 25% of the total consideration for the supply, the consideration shall be deemed to have become due on January 1, 1991 and not to have been paid before 1991. S.C. 1990, c. 45, s. 12.

- **346.** (1) **Transitional credit for small businesses.**—Where a person (other than a listed financial institution) is, in the particular fiscal quarter that is the first fiscal quarter of the person beginning in 1991, required to be registered under subsection 240(1) and the total of all consideration that in the particular fiscal quarter became due or was paid without having become due for taxable supplies made by the person in the course of a business does not exceed \$500,000,
 - (a) where the reporting period of the person is a fiscal quarter or a fiscal month, the person may deduct the specified amount of the person in determining the person's net tax for the

last reporting period of the person ending in the particular fiscal quarter, or for any subsequent reporting period of the person ending in 1991, the return under Division V for which is filed before 1993, and

- (b) in any other case, the Minister shall pay a rebate to the person equal to the specified amount of the person,
- nd, for the purposes of this subsection, where the total of all amounts each of which is the onsideration that became due or that was paid without becoming due for a taxable supply nade by a person in the course of a business in any three month period beginning in 1990 proughout which the person carried on business did not exceed \$500,000, the total of all onsideration that became due or that was paid without becoming due for taxable supplies nade by the person in the course of the business in the first fiscal quarter of the person reginning in 1991 shall be deemed not to exceed \$500,000.
- (2) **Specified amount.**—For the purposes of subsection (1), the specified amount of a particular person is an amount equal to the lesser of
 - (a) the total of \$300 and the lesser of
 - (i) \$700, and
 - (ii) 2% of the total consideration that became due, or that was paid without becoming due, for taxable supplies made by the particular person in any fiscal quarter of the person beginning after 1989 and before April 1991 in excess of \$15,000, and
 - (b) the amount by which \$1,000 exceeds the total of all amounts each of which is an amount that was by reason of this section deducted by, or rebated to, a person who was associated with the particular person at the end of the first fiscal quarter of the particular person beginning after 1990.
- (3) **Application for rebate.**—A rebate shall not be paid under paragraph (1)(b) to a erson unless the person files an application for the rebate on or before the day on or before which the person is required under Division V to file a return for the first fiscal year of the terson beginning after 1990.
- (4) **Application of provisions.**—Sections 262 to 264 apply in respect of rebates paid or ayable under this section as though they were paid or payable under Division VI. S.C. 1990, .45, s. 12; S.C. 1993, c. 27, s. 143.
- **347.** (1) **Transitional credit for taxi businesses.**—Where a small supplier carrying on a axi business is registered under Subdivision d of Division V before April 1991, the supplier nay, in determining the net tax for
 - (a) where the reporting period of the supplier is a fiscal quarter or a fiscal month, each reporting period of the supplier that ends in 1991 on or after the last day of the first fiscal quarter of the supplier beginning in that year, and
 - (b) in any other case, the first reporting period of the supplier beginning after 1990,
- leduct the specified amount of the supplier for that reporting period, where that net tax would be a positive amount if it were determined without reference to this subsection and the return under Division V for that period is filed before 1993.
- (2) **Specified amount.**—For the purposes of subsection (1), the specified amount of a upplier for a reporting period of the supplier is an amount equal to the lesser of
 - (a) the positive amount, if any, that would be the net tax for the period if that amount were determined without reference to that subsection, and
 - (b) the amount determined by the formula

A - F

where

A is \$300, and

B is the total of all amounts each of which is an amount that, because of that subsection, was deducted in determining the net tax for a preceding reporting period of the supplier. S.C. 1993, c. 27, s. 144.

SCHEDULE I [GOODS SUBJECT TO TAX UNDER PART III]

(Section 23)

- 1-4. [Amended R.S.C. 1985, c. 15 (1st Supp.), s. 41; repealed S.C. 1990, c. 45, s. 13.]
- 5. (a) Clocks and watches adapted to household or personal use, except railway men's watches, and those specially designed for the use of the blind, ten per cent of the amount by which the sale price or duty paid value exceeds fifty dollars;
 - (b) articles of all kinds made in whole or in part of ivory, jet, amber, coral, mother of pearl, natural shells, tortoise shell, jade, onyx, lapis lazuli or other semi-precious stones, ten per cent:
 - (c) the following articles, namely, articles commonly or commercially known as jewellery, whether real or imitation, including diamonds and other precious or semi-precious stones for personal use or for adornment of the person, and goldsmiths' and silversmiths products except gold-plated or silver-plated ware for the preparation or serving of food or drink, ten per cent.
 - 6. Automobiles, not including ambulances or hearses, namely,
 - (a) automobiles, other than station wagons and vans designed primarily for use as passenger vehicles, in excess of two thousand and seven kilograms (2 007 kg), in this section referred to as the "automobile mass limit", and
 - (b) station wagons and vans designed primarily for use as passenger vehicles in excess of two thousand two hundred and sixty-eight kilograms (2 268 kg), in this section referred to as the "wagon mass limit",

at the following rates:

- (c) for the portion of the mass thereof that exceeds the automobile mass limit or the wagon mass limit, as the case may be, but does not exceed the mass limit by more than forty-five kilograms (45 kg), thirty dollars,
- (d) for the portion of the mass thereof that exceeds the aggregate of forty-five kilograms (45 kg) plus the automobile mass limit or the wagon mass limit, as the case may be, but does not exceed the aggregate plus forty-five kilograms (45 kg), forty dollars,
- (e) for the portion of the mass thereof that exceeds the aggregate of ninety kilograms (90 kg) plus the automobile mass limit or the wagon mass limit, as the case may be, but does not exceed the aggregate plus forty-five kilograms (45 kg), fifty dollars, and
- (f) for each forty-five kilograms (45 kg) or portion thereof that the mass thereof exceeds the aggregate of one hundred and thirty-five kilograms (135 kg) plus the automobile mass limit or the wagon mass limit, as the case may be, sixty dollars,

and, for the purposes of this section, the mass of an automobile, station wagon or van is the mass of a fully manufactured automobile, station wagon or van at the time of its sale by the manufacturer or the importer, as the case may be, including the mass, at that time, of all articles and materials the value of which is included in its sale price at the time of sale by him except that where at the time of the sale the automobile, station wagon or van includes an air conditioner as permanently installed equipment, the mass, as otherwise determined under this section, shall be reduced by twenty-nine kilograms (29 kg).

- 7. Air conditioners designed for use in automobiles, station wagons, vans or trucks whether
 - (a) separate, or
 - (b) included as permanently installed equipment in an automobile, station wagon, van or truck at the time of sale or importation of the vehicle by the manufacturer or importer thereof, as the case may be, one hundred dollars
- and, for purposes of this section and section 8, an evaporator unit designed for use with or as part of an automotive type air conditioning system shall be deemed to be an air conditioner described in this section except where the evaporator unit is used for repair or replacement purposes.
 - 8. Section 7 does not apply in the case of any air conditioner described therein
 - (a) that is purchased or imported for permanent installation in an ambulance or hearse or is included as permanently installed equipment in such a vehicle;
 - (b) that is sold under conditions that would qualify the sale as a zero-rated supply for the purposes of Part IX of the Act or that is purchased by and for the personal or official use of a person who is entitled to the tax exemptions specified in article 34 of the Convention set out in Schedule I to the *Foreign Missions and International Organizations Act* or in article 49 of the Convention set out in Schedule II to that Act; or
 - (c) that is included as permanently installed equipment in an automobile, station wagon, van or truck, that is sold under conditions that would qualify the sale as a zero rated supply for the purposes of Part IX of the Act or that is purchased by and for the personal or official use of a person who is entitled to the tax exemptions specified in article 34 of the Convention set out in Schedule I to the *Foreign Missions and International Organizations Act* or in article 49 of the Convention set out in Schedule II to that Act. S.C. 1990, c. 45, s. 14; S.C. 1993, c. 27, s. 145.
 - 9. (a) Unleaded gasoline and unleaded aviation gasoline, \$0.085 per litre.
 - (b) Leaded gasoline and leaded aviation gasoline, \$0.095 per litre, R.S.C. 1985, c. 7 (2nd Supp.), s. 52; R.S.C. 1985, c. 42 (3rd Supp.), s. 2; R.S.C. 1985, c. 12 (4th Supp.), s. 38; S.C. 1989, c. 22, s. 5.
- 9.1 Diesel fuel and aviation fuel, other than aviation gasoline, \$0.04 per litre. R.S.C. 1985. c. 7 (2nd Supp.), s. 52; R.S.C. 1985, c. 42 (3rd Supp.), s. 2.
- 10. Section 6 does not apply in respect of any of the goods mentioned in that section that are
 - (a) sold under conditions that would qualify the sale as a zero rated supply for the purposes of Part IX of the Act;
 - (b) purchased or imported for police or fire-fighting services; or
 - (c) purchased by and for the personal or official use of a person who is entitled to the tax exemptions specified in article 34 of the Convention set out in Schedule I to the Foreign

Missions and International Organizations Act or in article 49 of the Convention set out in Schedule II to that Act. S.C. 1990, c. 45, s. 15; S.C. 1993, c. 27, s. 146.

11. Payment of the tax imposed by virtue of section 6 may be deferred in the case of automobiles imported by persons who manufacture automobiles in Canada until such time as the imported automobiles are sold in Canada by those persons.

SCHEDULE II TAX RATES ON TOBACCO PRODUCTS

(Section 23)

1. Cigarettes:

- (a) \$0.01888 for each five cigarettes or fraction of five cigarettes contained in any package, where
 - (i) the cigarettes are marked or stamped in accordance with the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to clearly indicate that the cigarettes are intended for retail sale in the Province of Ontario, or
 - (ii) the cigarettes are black stock delivered after March 25, 1994 by the manufacturer or producer of the cigarettes to a supplier who has a permit under section 9 of the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to sell black stock cigarettes and the supplier certifies to the manufacturer or producer, in any form and manner authorized by the Minister, that the cigarettes are intended for resale in accordance with that Act to on-reserve retailers (as defined in subsection 23.35(1));
- (b) \$0.00888 for each five cigarettes or fraction of five cigarettes contained in any package, where the cigarettes are marked or stamped in accordance with the *Tobacco Tax Act*, R.S.Q. 1977, c. I-2, to clearly indicate that the cigarettes are intended for retail sale in the Province of Quebec;
- (c) \$0.08388 for each five cigarettes or fraction of five cigarettes contained in any package, where
 - (i) the cigarettes are marked or stamped in accordance with the *Tobacco Tax Act*, R.S.N.S. 1989, c. 470, to clearly indicate that the cigarettes are intended for retail sale in the Province of Nova Scotia, or
 - (ii) the cigarettes are black stock delivered after April 14, 1994 by the manufacturer or producer of the cigarettes to a designated wholesale vendor (as defined in subsection 23.36(1)) and the designated wholesale vendor certifies to the manufacturer or producer, in any form and manner authorized by the Minister, that the cigarettes are intended for resale to designated retail vendors (as defined in subsection 23.36(1));
- (d) \$0.08388 for each five cigarettes or fraction of five cigarettes contained in any package, where the cigarettes are marked or stamped in accordance with the *Tobacco Tax Act*, R.S.N.B. 1973, c. T-7, to clearly indicate that the cigarettes are intended for retail sale in the Province of New Brunswick;
- (e) \$0.08388 for each five cigarettes or fraction of five cigarettes contained in any package, where
 - (i) the cigarettes

- (A) are marked or stamped "ATLANTIC" or "ATLANTIQUE" in accordance with the *Health Tax Act*, R.S.P.E.I. 1988, c. H-3, but not marked or stamped to indicate that they are intended for retail sale in a particular province, and are delivered after May 31, 1994 and before September 12, 1994 by the manufacturer or producer of the cigarettes to a wholesale vendor licensed as such under that Act, or
- (B) are black stock delivered after August 31, 1994 by the manufacturer or producer of the cigarettes to a wholesale vendor licensed as such under that Act, and
- (ii) the wholesale vendor certifies to the manufacturer or producer, in any form and manner authorized by the Minister, that the cigarettes are intended for retail sale in the Province of Prince Edward Island in accordance with that Act; and
- (f) \$0.13388 for each 5 cigarettes or fraction of 5 cigarettes contained in any package, in any other case. R.S.C. 1985, c. 7 (2nd Supp.), s. 53; R.S.C. 1985, c. 42 (2nd Supp.), s. 11; R.S.C. 1985, c. 12 (4th Supp.), s. 39; S.C. 1989, c. 22, s. 6; S.C. 1990, c. 45, s. 16; S.C. 1991, c. 42, s. 5; S.C. 1994, c. 29, s. 14.

2. Tobacco sticks:

- (a) \$0.00165 per stick, where
 - (i) the tobacco sticks are marked or stamped in accordance with the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to clearly indicate that the tobacco sticks are intended for retail sale in the Province of Ontario, or
 - (ii) the tobacco sticks are black stock delivered after March 25, 1994 by the manufacturer or producer of the tobacco sticks to a supplier who has a permit under section 9 of the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to sell black stock cigarettes and the supplier certifies to the manufacturer or producer, in any form and manner authorized by the Minister, that the tobacco sticks are intended for resale in accordance with that Act to on-reserve retailers (as defined in subsection 23.35(1));
- (b) \$0.00165 per stick, where the tobacco sticks are marked or stamped in accordance with the *Tobacco Tax Act*, R.S.Q 1977, c. I-2, to clearly indicate that the tobacco sticks are intended for retail sale in the Province of Quebec;
- (c) \$0.00575 per stick, where the tobacco sticks are marked or stamped in accordance with the *Tobacco Tax Act*, R.S.N.B. 1973, c. T-7, to clearly indicate that the tobacco sticks are intended for retail sale in the Province of New Brunswick; and
- (d) \$0.01065 per stick, in any other case. R.S.C. 1985, c. 7 (2nd Supp.), s. 53; S.C. 1989, c. 22, s. 6; S.C. 1991, c. 42, s. 5; S.C. 1994, c. 29, s. 14.
- 3. Manufactured tobacco other than cigarettes and tobacco sticks:
- (a) \$1.648 per kilogram, where
 - (i) the manufactured tobacco is marked or stamped in accordance with the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to clearly indicate that the manufactured tobacco is intended for retail sale in the Province of Ontario, or
 - (ii) the manufactured tobacco is black stock delivered after March 25, 1994 by the manufacturer or producer of the manufactured tobacco to a supplier who has a permit under section 9 of the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to sell black stock cigarettes and the supplier certifies to the manufacturer or producer, in any form and manner authorized by the Minister, that the manufactured tobacco is intended for

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resale in accordance with that Act to on-reserve retailers (as defined in subsection 23.35(1));

- (b) \$7.948 per kilogram, where
 - (i) the manufactured tobacco is marked or stamped in accordance with the *Tobacco Tax Act*, R.S.N.S. 1989, c. 470, to clearly indicate that the manufactured tobacco is intended for retail sale in the Province of Nova Scotia, or
 - (ii) the manufactured tobacco is black stock delivered after April 14, 1994 by the manufacturer or producer of the manufactured tobacco to a designated wholesale vendor (as defined in subsection 23.36(1)) and the designated wholesale vendor certifies to the manufacturer or producer, in any form and manner authorized by the Minister, that the manufactured tobacco is intended for resale to designated retail vendors (as defined in subsection 23.36(1));
- (c) \$9.448 per kilogram, where the manufactured tobacco is marked or stamped in accordance with the *Tobacco Tax Act*, R.S.N.B. 1973, c. T-7, to clearly indicate that the manufactured tobacco is intended for retail sale in the Province of New Brunswick;
- (d) \$7.948 per kilogram, where
 - (i) the manufactured tobacco is black stock delivered after May 31, 1994 by the manufacturer or producer of the manufactured tobacco to a wholesale vendor licensed as such under the *Health Tax Act*, R.S.P.E.I. 1988, c. H-3, and
 - (ii) the wholesale vendor certifies to the manufacturer or producer, in any form and manner authorized by the Minister, that the manufactured tobacco is intended for retail sale in the Province of Prince Edward Island in accordance with that Act; and
- (e) 10.648 per kilogram, in any other case. R.S.C. 1985, c. 7 (2nd Supp.), s. 53; S.C. 1991, c. 42, s. 5; S.C. 1993, c. 25, s. 63; S.C. 1994, c. 29, s. 14.
- **4.** Cigars, the greater of \$0.03947 per cigar and 50 per cent. S.C. 1991, c. 42, s. 5; S.C. 1993, c. 25, s. 64; S.C. 1994, c. 29, s. 14.

SCHEDULE II.1

SPECIFIC TAX RATES ON PETROLEUM PRODUCTS [BEFORE 1991]

(Subsection 50(1.1))

- **1.** Regular gasoline and unleaded gasoline, \$0.0036 per litre. R.S.C. 1985, c. 7 (2nd Supp.), s. 54; R.S.C. 1985, c. 42 (2nd Supp.), s. 12; R.S.C. 1985, c. 12 (4th Supp.), s. 40.
- **2.** Premium leaded gasoline and premium unleaded gasoline, \$0.0037 per litre. R.S.C. 1985, c. 7 (2nd Supp.), s. 54; R.S.C. 1985, c. 42 (2nd Supp.), s. 12; R.S.C. 1985, c. 12 (4th Supp.), s. 40.
- **3.** [Added R.S.C. 1985, c. 7 (2nd Supp.), s. 54; amended R.S.C. 1985, c. 42 (2nd Supp.), s. 12; repealed R.S.C. 1985, c. 12 (4th Supp.), s. 40.]
- **4.** [Added R.S.C. 1985, c. 7 (2nd Supp.), s. 54; amended R.S.C. 1985, c. 42 (2nd Supp.), s. 12; repealed R.S.C. 1985, c. 12 (4th Supp.), s. 40.]
- **5.** Diesel fuel, \$0.00302 per litre. R.S.C. 1985, c. 7 (2nd Supp.), s. 54; R.S.C. 1985, c. 42 (2nd Supp.), s. 12.

SCHEDULE III [GOODS EXEMPT FROM FST BEFORE 1991]

(Sections 15, 23 and 51)

PART I

COVERINGS OR CONTAINERS

- 1. Usual coverings or usual containers sold to or imported by a manufacturer or producer for use by him exclusively in covering or containing goods of his manufacture or production that are not subject to the consumption or sales tax, but not including coverings or containers designed for dispensing goods for sale or designed for repeated use.
- **2.** All of the following usual coverings or usual containers when for use exclusively for covering or containing goods not subject to the consumption or sales tax:
 - (a) barrels and boxes for fish; lobster crates; scallop bags;
 - (b) barrels, boxes, baskets and crates for packaging fruits and vegetables;
 - (c) bottles and cans for milk and cream;
 - (d) boxes, crates and cartons for eggs;
 - (e) butter and cheese boxes;
 - (f) cans and insulated bags for ice cream;
 - (g) corrugated paper boxes for bread;
 - (h) drums and cans for honey;
 - (i) flour bags;
 - (j) crates, cages and boxes for transportation of live poultry; and
 - (k) bottles for food or drink.
- **3.** Materials for use exclusively in the manufacture of the tax exempt goods mentioned in sections 1 and 2 of this Part.

PART II

DIPLOMATIC

- 1. Articles for the use of the Governor General.
- 2. Articles imported for the personal or official use of the Heads of Diplomatic Missions. High Commissioners representing other of Her Majesty's Governments, Counsellors, Secretaries and Attach at Embassies, Legations and Offices of High Commissioners in Canada, Trade Commissioners and Assistant Trade Commissioners representing other of Her Majesty's Governments, Consuls General, Consuls and Vice-Consuls of Foreign Nations, who are natives or citizens of the countries they represent and are not engaged in any other business or profession.
- **3.** Automobiles, cigars, cigarettes, manufactured tobacco, ale, beer, stout, wines and spirits purchased in Canada by and for the personal or official use of any of the persons mentioned in section 2 of this Part.

PART III

EDUCATIONAL, TECHNICAL, CULTURAL, RELIGIOUS AND LITERARY

- 1. Bibles, missals, prayer books, psalm and hymn books, religious tracts, Sunday School lesson pictures, books, bound and unbound, pamphlets, booklets, leaflets, scripture, prayer, hymn and mass cards and religious mottoes and pictures, unframed, for the promotion of religion, and materials to be used exclusively in the manufacture thereof, but not including forms, stationery or annual calendars.
- 2. Chalkboards, tackboards, desks, tables and chairs, not including upholstered chairs, when sold to or imported by educational institutions for their own use and not for resale, and articles and materials for use exclusively in the manufacture of the tax exempt goods specified in this section.
 - 3. (1) The following printed matter, articles and materials:
 - (a) college and school annuals; unbound literary papers regularly issued at stated intervals not less frequently than four times yearly; sheet music; manuscripts; national manufacturing, industrial or trade directories; printed books that contain no advertising and are solely for educational, technical, cultural or literary purposes; articles and materials for use exclusively in the manufacture or production of the foregoing; and
 - (b) magazines and parts thereof; newspapers and parts thereof; articles and materials for use exclusively in the manufacture or production of the foregoing; all the foregoing other than:
 - (i) cultural, entertainment, sports or like publications that serve as programs,
 - (ii) magazines that are not issued regularly at stated intervals or that are so issued but at stated intervals less frequently than four times yearly,
 - (iii) any single issue of a magazine if
 - (A) the printed space therein devoted to advertising is more than ninety per cent of the total printed space therein, or
 - (B) the aggregate of the printed space devoted to advertising in the four issues of the magazine immediately preceding that issue is more than seventy per cent of the aggregate of the total printed space in those four issues,
 - (iv) any single issue of a newspaper if the printed space therein devoted to advertising is more than ninety per cent of the total printed space therein,
 - (v) all issues of a newspaper in any calendar quarter if the printed space devoted to advertising in any issue is, in more than fifty per cent of the issues of the newspaper in that calendar quarter, more than eighty per cent of the total printed space in that issue,
 - (vi) programs, advertising supplements or advertising inserts that,
 - (A) being substantially the same, are for distribution in two or more separate magazines or newspapers, or
 - (B) are supplied by or on behalf of an advertiser to the publisher of a magazine or newspaper, and
 - (vii) programs, advertising supplements, advertising inserts or other advertising material in a newspaper that are
 - (A) printed in a format different from the rest of the newspaper,

- (B) not sequentially numbered in a manner consistent with the rest of the newspaper, or
- (C) composed of one or more sheets folded separately from any other section of the newspaper,

but excluding albums, biographical, financial or statistical surveys and reports, books for writing or drawing on, catalogues, colouring books, directories of all kinds not mentioned in this section, fashion books, guide books, periodic reports, price lists, rate books, timetables, year books, any other similar printed matter and any printed matter or part thereof or class of printed matter as may be designated by the Governor in Council. (2) For the purposes of subparagraphs (1)(b)(iii) to (v),

- (a) "printed space"
 - (i) in the case of printed space devoted to advertising, includes all space available to an advertiser, and
 - (ii) in any other case, does not include the margins of a page; and
- (b) "margin" means that part of the surface of a page that is between the upper, lower, inner and outer edges of the page and the main body of printed matter and may contain all or any portion of the name, date, issue number, page number or price of the publication or all or any portion of the name or number of a section of the publication or any marks, marginal notes or similar printed matter and may be coloured or patterned. R.S.C. 1985, c. 15 (1st Supp.), s. 42.
- **4.** Phonograph records and audio tapes authorized by the Department of Education of any province for instruction in the English or French language, and materials for use exclusively in the manufacture thereof.
 - 5. Books purchased or imported by public libraries.
 - **6.** Directories purchased or imported by free reference libraries.
- 7. Printed matter for use by school boards, schools and universities and not for sale, and articles and materials for use exclusively in the manufacture or production of the printed matter.
- **8.** Bells of all kinds and bell operating equipment; parts therefor; the foregoing when for use in churches only.
 - 9. Astronomical, geographical and topographical globes.
- 10. Utensils, instruments and other apparatus that are designed for use in classroom instruction and that are to be employed directly in teaching or research for more than fifty per cent of the time they are in use; scientific preparations for use directly in teaching or research; specimens, anatomical preparations and skeletons; scientific apparatus and equipment ancillary thereto; scientific utensils and instruments; glassware for laboratory or scientific uses; parts of the foregoing; all of the foregoing for use by public libraries, public museums or institutions established solely for educational or scientific purposes, and not for sale or rental; articles and materials for use exclusively in the manufacture of the foregoing.
- 11. Maps, charts, diagrams, posters, motion picture films, filmstrips, microfilms, slides and other photographic reproductions and pictorial illustrations; reproductions of works of art; sound and video recordings; models, static or moving; parts of the foregoing; all of the foregoing for use by public libraries, public museums, or institutions established solely for educational, scientific or religious purposes, and not for sale or rental; articles and materials for use exclusively in the manufacture of the foregoing.

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- 12. Goods for placement as exhibits in public museums, public libraries, universities, colleges or schools and not for sale.
- 13. Goods, other than spirits or wines, manufactured or produced more than one hundred years prior to the date of their importation or sale.
- **14.** Imported printed matter that is to be made available to the general public, without charge, for the promotion of tourism, where the imported printed matter is
 - (a) imported by a government or a department, agency or representative of a government; or
 - (b) produced or purchased outside Canada
 - (i) by a board of trade, chamber of commerce, municipal or automobile association or other similar organization, or
 - (ii) by or on the order of a foreign government or a department, agency or representative of a foreign government. R.S.C. 1985, c. 7 (2nd Supp.), s. 55; R.S.C. 1985, c. 42 (2nd Supp.), s. 13.
- **15.** Botanical and entomological specimens; mineralogical specimens; skins of birds and animals not native to Canada, for taxidermic purposes, not further manufactured than prepared for preservation; fish skins; anatomical preparations and skeletons or parts thereof; all the foregoing when imported into Canada. R.S.C. 1985, c. 41 (3rd Supp.), s. 123.

PART IV

FARM AND FOREST

- 1. Animals, living; poultry, living; bees.
- 2. Baling wire for baling farm produce, and articles and materials to be used or consumed exclusively in the manufacture thereof.
- 3. Boxes for farm wagons, and articles and materials for use exclusively in the manufacture thereof.
 - 4. Casein.
- **5.** Cut flowers; cut foliage; dormant flower bulbs, corms, roots and tubers; nursery stock; potted, flowering or bedding plants; vegetable plants.
- **6.** Drain tile for agricultural purposes and materials for use exclusively in the manufacture thereof.
 - 7. Farm produce produced and sold by the individual farmer.
- **8.** Farm wagons, including four-wheeled farm wagons equipped to be tractor drawn and farm sleds; parts therefor and materials for use exclusively in the manufacture thereof.
 - **9.** Fertilizers and materials for use exclusively in the manufacture thereof.
- 10. Forest products when produced and sold by the individual settler or farmer; logs and round unmanufactured timber; sawdust; wood shavings.
 - 11. Friction disc sharpeners.
 - 12. Furs, raw.
- 13. Grain or seed cleaning machines and complete parts therefor; materials for use exclusively in the manufacture thereof.

- 14. Grains and seeds in their natural state, other than those included in any paragraph of section 1 of Part V of this Schedule; hay; hops; straw. R.S.C. 1985, c. 12 (4th Supp.), s. 41.
- 15. Harness for horses and complete parts therefor, and articles and materials for use exclusively in the manufacture thereof; harness leather.
 - 16. Hides, raw and salted.
 - 17. Individual tree guards and tree protectors not exceeding one metre in height.
 - 18. Peat moss when used for agricultural purposes, including poultry litter.
- 19. Preparations, chemicals or poisons for pest control purposes in agriculture or horticulture, and materials used in the manufacture thereof.
 - 20. Rodent poisons, and materials for use exclusively in the manufacture thereof.
- **21.** Sap spouts, sap buckets and evaporators and complete parts therefor when for use exclusively in the production of maple syrup.
- 22. Self-propelled, self-unloading forage wagons for off-highway use for farm purposes and materials used in the manufacture thereof.
- **23.** Steel pens, steel stalls and complete parts therefor for farm animals, and articles and materials for use exclusively in the manufacture thereof.
- **24.** Tobacco dryers, not including buildings, for use on the farm for farm purposes only. parts therefor and articles and materials for use in the manufacture thereof.
- 25. Traction engines for farm purposes and accessories therefor, not including machines and tools for operation by those engines, and complete parts of the foregoing, and materials to be used exclusively in the manufacture thereof.
- **26.** Wool not further prepared than washed; woollen rolls or wool yarn milled for a producer of wool for his own use from wool supplied by him.
 - 27. Animal semen.
- **28.** Roofs, chutes, ladders, wall sections with or without doors incorporated therein, materials and parts therefor; all of the foregoing for the construction or repair of silos for storage ensilage, or of tanks or vessels for storing farm animal or poultry excreta.
 - 29. Agricultural machinery and parts therefor.
- **30.** Aluminum sluice-type devices for controlling water in irrigation ditches; bird scaring devices but not including recorders or reproducers therefor; farm implements and farm equipment; spraying and dusting machines and attachments therefor; parts of all the foregoing; all the foregoing when for use on the farm for farm purposes only.
- 31. Articles and materials for use exclusively in the manufacture of the tax exempt goods mentioned in sections 28 to 30 of this Part.

PART V

FOODSTUFFS

- 1. Food and drink for human consumption (including sweetening agents, seasonings and other ingredients to be mixed with or used in the preparation of the food and drink), other than
 - (a) wine, spirits, beer, malt liquor and other alcoholic beverages;
 - (b) non-alcoholic malt beverages;
 - (c) carbonated beverages and goods for use in the preparation of carbonated beverages;

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- (d) non-carbonated fruit juice beverages and fruit flavoured beverages, other than milk-based beverages, containing less than twenty-five per cent by volume of
 - (i) a natural fruit juice or combination of natural fruit juices, or
 - (ii) a natural fruit juice or combination of natural fruit juices that have been reconstituted into the original state,

and goods that, when added to water, produce a beverage described in this paragraph;

- (e) candies, confectionery that may be classed as candy, and all goods sold as candies, such as candy floss, chewing gum and chocolate, whether naturally or artificially sweetened, and including fruits, seeds, nuts and popcorn when coated or treated with candy, chocolate, honey, molasses, sugar, syrup or artificial sweeteners;
- (f) chips, crisps, puffs, curls and sticks (such as potato chips, corn chips, cheese puffs, potato sticks, bacon crisps and cheese curls) and other similar snack foods; popcorn and brittle pretzels; but not including any product sold primarily as a breakfast cereal or any product manufactured or produced in a retail outlet for sale in that outlet exclusively and directly to consumers;
- (g) salted nuts and salted seeds;
- (h) granola products, but not including any product sold primarily as a breakfast cereal or any product manufactured or produced in a retail outlet for sale in that outlet exclusively and directly to consumers;
- (i) snack mixtures containing cereals, nuts, seeds, dried fruit or any other edible product, but not including any mixture sold primarily as a breakfast cereal or any mixture manufactured or produced in a retail outlet for sale in that outlet exclusively and directly to consumers:
- (j) ice lollies and flavoured, coloured or sweetened ice waters, whether or not frozen, but not including any product manufactured or produced in a retail outlet for sale in that outlet exclusively and directly to consumers;
- (k) ice cream, ice milk, sherbet, frozen yoghurt or frozen pudding, or any product containing any of those goods, when packaged in individual servings, but not including any product manufactured or produced in a retail outlet for sale in that outlet exclusively and directly to consumers; and
- (1) fruit bars, rolls and drops and similar fruit-based snack foods, but not including any product manufactured or produced in a retail outlet for sale in that outlet exclusively and directly to consumers; and
- (m) individually wrapped and packaged snack foods that are similar to chocolate bars, but not including any product manufactured or produced in a retail outlet for sale in that outlet exclusively and directly to consumers. R.S.C. 1985, c. 7 (2nd Supp.), s. 55; R.S.C. 1985, c. 12 (4th Supp.), s. 42.
- **2.** Feeds, and supplements for addition to such feeds, for animals, fish, fowl or bees that are ordinarily raised to produce or to be used as food for human consumption. R.S.C. 1985, c. 7 (2nd Supp.), s. 55.
- 3. Articles and materials for use exclusively in the manufacture or production of the tax exempt goods mentioned in sections 1 and 2 of this Part.

PART VI

FUELS AND ELECTRICITY

- 1. Additives for fuel oil for heating, and materials used in the manufacture thereof.
- 2. Electricity.
- **3.** Fuel oil for use in the generation of electricity except where the electricity so generated is used primarily in the operation of a vehicle.
- **4.** Fuel for lighting or heating, but not including fuel when for use in internal combustion engines; crude oil to be used in the production of fuel.
- **5.** Gas manufactured from coal, calcium carbide or oil for illuminating or heating purposes.
 - 6. Natural gas.

PART VII

GOODS ENUMERATED IN CUSTOMS TARIFF ITEMS

- **1.** Goods enumerated or referred to under heading No. 98.01, 98.02, 98.03, 98.04, 98.05, 98.06, 98.07, 98.10, 98.11, 98.16, 98.19 or 98.21 of Schedule I to the *Customs Tariff*, other than tariff item No. 9804.30.00. R.S.C. 1985, c. 41 (3rd Supp.), s. 124; S.C. 1988, c. 65, s. 115.
 - 2. [Repealed R.S.C. 1985, c. 41 (3rd Supp.), s. 124.]

PART VIII

HEALTH

- **1.** Any drug described in Schedule D to the *Food and Drugs Act*. R.S.C. 1985, c. 7 (2nd Supp.), s. 55.
- **1.1** Any drugs containing a drug described in Schedule F to the *Food and Drug Regulations* made under the *Food and Drugs Act*. R.S.C. 1985, c. 7 (2nd Supp.), s. 55.
- **1.2** Any drug containing a drug or other substance included in Schedule G to the *Food and Drugs Act*, R.S.C. 1985, c. 7 (2nd Supp.), s. 55.
- **1.3** Any drug containing a substance included in the schedule to the *Narcotic Control Act* other than a drug or mixture of drugs that may be sold by a pharmacist without a prescription pursuant to regulations made under that Act. R.S.C. 1985, c. 7 (2nd Supp.), s. 55.
 - 1.4 The following drugs:

Digoxin

Digitoxin

Deslanoside

Erythrityl Tetranitrate

Isosorbide Dinitrate

Nitroglycerine

Prenylamine

Ouinidine and its salts

Aminophylline

Oxtriphylline

Theophylline

Theophylline Calcium Aminoacetate

Theophylline Sodium Aminoacetate

Medical oxygen

Epinephrine and its salts. R.S.C. 1985, c. 7 (2nd Supp.), s. 55; R.S.C. 1985, c. 12 (4th Supp.), s. 43.

- **2.** Articles and materials for the sole use of any *bona fide* public hospital certified to be such by the Department of National Health and Welfare, when purchased in good faith for use exclusively by that hospital and not for resale.
- 3. Artificial breathing apparatus purchased or leased on the written order of a registered medical practitioner by an individual afflicted with a respiratory disorder for his own use.
- **4.** Mechanical percussors for postural drainage treatment purchased on the written order of a registered medical practitioner.
 - 5. Artificial eyes.
 - 6. Artificial teeth. R.S.C. 1985, c. 12 (4th Supp.), s. 44.
- 7. Hearing aids and parts therefor, including batteries specifically designed for use therewith.
- **8.** Devices designed to convert sound to light signals for use by the deaf, when purchased on the written order of a registered medical practitioner.
- **9.** Laryngeal speaking aids and parts therefor, including batteries specifically designed for use therewith.
 - 10-12. [Repealed R.S.C. 1985, c. 7 (2nd Supp.), s. 55.]
- 13. Eyeglasses and contact lenses for the treatment or correction of a defect of vision when prepared in accordance with the prescription of a medical practitioner or an optometrist and parts therefor.
- 14. Communication devices, for use with telegraph or telephone apparatus, purchased or leased on the written order of a registered medical practitioner for the assistance of the deaf and the dumb.
- 15. Invalid chairs, commode chairs, walkers, wheel-chair lifts and similar aids to locomotion, with or without wheels; motive power and wheel assemblies therefor; patterning devices; toilet, bath and shower seats; all the foregoing specially designed for the disabled, and such other equipment as may be prescribed by regulation of the Governor in Council as being aids to the mobility of the disabled; accessories attachments for all the foregoing, including batteries specially designed for use therewith.
- 16. Selector control devices, purchased or leased on the written order of a registered medical practitioner, specially designed for use by physically handicapped persons to enable those persons to select, energize or control various household, industrial and office equipment.
- 17. Heart monitoring devices, purchased or leased on the written order of a registered medical practitioner by an individual afflicted with heart disease for his own use, including batteries specially designed for use therewith.

- 18. Hospital beds purchased or leased on the written order of a registered medical practitioner by an incapacitated person for his own use.
- 19. Insulin infusion pumps and parts specially designed therefor and insulin syringes. R.S.C. 1985, c. 7 (2nd Supp.), s. 55.
- **20.** Artificial limbs, with or without power, and all accessories and devices therefor; spinal and other orthopaedic braces; specially constructed appliances made to order for a person having a crippled or deformed foot or ankle; parts of the foregoing.
- **21.** Aural, nasal, mastectomy and other medical or surgical prostheses; ileostomy, colostomy and urinary appliances or similar articles designed to be worn by an individual; articles and materials, not including cosmetics, for use by the individual user of the prosthesis, appliance or similar article and necessary for the proper application and maintenance of the foregoing, R.S.C. 1985, c. 12 (4th Supp.), s. 45.
- **22.** Canes and crutches designed for use by the handicapped: attachments, accessories and parts therefor.
- **23.** Blood glucose monitors and meters and parts and accessories specially designed therefor, blood sugar testing strips, blood ketone testing strips, urinary sugar testing strips, reagents and tablets and urinary ketone testing strips, reagents and tablets. R.S.C. 1985, c. 15 (1st Supp.), s. 43; R.S.C. 1985, c. 7 (2nd Supp.), s. 55.
- **24.** Articles and materials to be incorporated into or to form a constituent or component part of any of the tax-exempt goods mentioned in this Part when sold to or imported by a manufacturer or producer for use by that manufacturer or producer in the manufacture or production of any such tax-exempt goods. R.S.C. 1985, c. 12 (4th Supp.), s. 46.

PART IX

MARINE AND FISHERIES

- 1. Boats purchased by fishermen for use in the fisheries, and articles and materials for use exclusively in the manufacture, equipment or repair thereof.
 - 2. Carrageen or Irish moss.
- 3. Cotton duck and cotton sail twine for use exclusively in the manufacture of equipment for ships or vessels.
- **4.** Lobster pots, lobster traps, crab or shrimp pots, crab or shrimp traps, cod traps, eel traps, articles for binding or wedging lobster claws, and materials for use exclusively in the manufacture thereof.
- 5. Fishing nets and nettings of all kinds; specially designed needles for use in repairing fishing nets; metal panel devices for use in keeping nets open; metal swivels; fish hooks, lures, jiggers and artificial baits; sinkers and floats including trawl kegs; threads, twine, marlines, fishing lines, rope and cordage; carapace measures; all the foregoing for use in commercial fishing, or in the commercial harvesting of marine plants; none of the foregoing for sports fishing purposes; articles and materials for use in the manufacture, preservation or repair of the tax-exempt goods specified in this section.

PART X

MINES AND QUARRIES

- 1. Crushed stone; crushed gravel.
- 2. Gold and silver in bars, blocks, drops, ingots, plates or sheets not further manufactured.
- 3. Ores of all kinds.
- 4. Sand, gravel, rubble and field stone.
- 5. Vermiculite; perlite.
- 6. Blast furnace slag and boiler slag, not further processed than crushed and screened.

PART XI

MISCELLANEOUS

- 1. Articles and materials purchased or imported by a government of a country designated by the Governor in Council pursuant to heading No. 98.10 of Schedule I to the *Customs Tariff*, or purchased or imported by a Canadian government agency on behalf of such a government, for the construction, maintenance or operation of military or defence establishments in Canada and not intended for resale, gift or other disposition except as may be authorized by the Minister of National Revenue. R.S.C. 1985, c. 41 (3rd Supp.), s. 125.
 - 2. Baler twine and materials for use exclusively in the manufacture thereof.
 - 3. British and Canadian coins; foreign gold coin.
- **4.** Coin of any metal, of authorized weight and design, issued for use as currency under the authority of the government of any country.
 - 5. Donations of clothing and books for charitable purposes.
- **6.** Fire brick, plastic refractories, high temperature cement, fire clay and other refractory materials and materials to be used or consumed exclusively in the manufacture thereof.
- 7. Identification tags or labels for designating the grades or quality of meat, poultry, fish, eggs, fruit and vegetables, and materials for use exclusively in the manufacture thereof.
- **8.** Memorials or monuments erected in memory of members of the Armed Forces who lost their lives in the service of their country.
 - 9. Radium.
- 10. Stained glass windows of blown glass, technically called Antique glass, or of handmade slab glass, and materials for use exclusively in the manufacture of those windows.
- 11. Tanks for collecting milk and materials for use exclusively in the manufacture thereof, not including chassis or cabs.
 - 12. War veterans' badges.
 - 13. Sodium chloride.
 - 14. Ice.
- **15.** Bicycles and tricycles, and articles and materials for use exclusively in the manufacture or production thereof.
- 16. Amusement riding devices, ancillary equipment and parts therefor, not including motor trucks or coin operated devices, specially designed for use at agricultural exhibitions or

commercial fairs, and articles and materials for use exclusively in the manufacture or production thereof.

- 17. Conversion parts and kits, for use in the conversion or modification to the metric system of retail scales having a maximum weighing capacity of one hundred kilograms, specifically designed for and used in the weighing of goods in retail operations, when sold or imported before January 1, 1984.
- 18. Articles and materials to be used in Canada for the construction of bridges and tunnels crossing the boundary between the United States and Canada.
- 19. Postage stamps; medals, trophies and other prizes, not including usual merchantable goods, won abroad in competitions or bestowed, received or accepted abroad, or donated by persons or organizations abroad for heroic deeds, valour or distinction.
- 19.1 Original engravings, prints and lithographs produced directly in black and white or in colour of one or of several plates wholly executed by hand by the artist, but not including such articles produced by any mechanical or photo-mechanical process. R.S.C. 1985, c. 12 (4th Supp.), s. 47.
- **20.** Paintings, drawings and pastels; all the foregoing when produced by an artist and valued at not less than twenty dollars each.
- **21.** Original sculptures and statuary; the first twelve replicas thereof; assemblages; all the foregoing when produced by a professional artist and valued at not less than seventy-five dollars each.
- 22. Hand-woven tapestries or handmade appliqués; all the foregoing when suitable only for use as wall hangings and valued at not less than two hundred and fifteen dollars per square metre.
- **23.** All articles specially designed for the use of the blind for any purpose when for blind persons and purchased or imported by, or on the order or certificate of, the Canadian National Institute for the Blind, or any other *bona fide* institution or association for the blind.
- **24.** Sanitary napkins, tampons, belts for sanitary napkins, and articles and materials for use exclusively in the manufacture or production thereof. R.S.C. 1985, c. 7 (2nd Supp.), s. 55.
- **25.** Contraceptives and articles and materials for use exclusively in the manufacture or production thereof. R.S.C. 1985, c. 7 (2nd Supp.), s. 55.
- **26.** Trophies of war, being arms, military stores, munitions of war and other articles, which are to be retained for use as trophies, when imported into Canada, R.S.C. 1985, c. 41 (3rd Supp.), s. 126.
- **27.** Menageries; carriages equipped to be animal drawn and harness for use therewith. R.S.C. 1985, c. 41 (3rd Supp.), s. 126.
 - 28. All the following:
 - (a) electronic bar-code scanning equipment designed to read product bar codes applied to goods held by a person for sale in the ordinary course of business;
 - (b) cash registers designed with the capability of calculating and recording sales taxes imposed by more than one jurisdiction;
 - (c) equipment designed to convert a cash register or similar sales recording device to one that has the capability of calculating and recording sales taxes imposed by more than one jurisdiction;
 - (d) sales recording devices similar to cash registers, designed with the capability of

calculating and recording sales taxes imposed by more than one jurisdiction, sold to or imported by a person for use by the person in a retail or wholesale outlet primarily for recording sales and controlling inventory;

- (e) electronic equipment that is ancillary to the goods described in any of paragraphs (a) to (d), when sold to or imported by a person for use by the person in a retail or wholesale outlet primarily for recording sales and controlling inventory; and
- (f) articles and materials to be incorporated into or to form a constituent or component part of any of the goods described in paragraphs (a) to (e), when sold to or imported by a manufacturer or producer for use by the manufacturer or producer in the manufacture or production of those goods. S.C. 1990, c. 45, s. 17.

PART XII

MUNICIPALITIES

- 1. Certain goods sold to or imported by municipalities for their own use and not for resale, as follows:
 - (a) culverts;
 - (b) equipment, at a price in excess of two thousand dollars per unit, specially designed for use directly for road making, road cleaning or fire fighting, but not including automobiles or ordinary motor trucks;
 - (c) fire hose including couplings and nozzles therefor;
 - (d) fire truck chassis for the permanent attachment thereon of fire fighting equipment for use directly in fire fighting;
 - (e) goods for use directly in a water distribution, sewerage or drainage system; goods used in the construction of a building, or that part of a building, used exclusively to house machinery and apparatus for use directly in a water distribution, sewerage or drainage system; chemicals for use in the treatment of water or sewage in a water distribution, sewerage or drainage system; and, for the purposes of this exemption, any agency operating a water distribution, sewerage or drainage system for or on behalf of a municipality may be declared by the Minister to be a municipality;
 - (f) laminated timber for bridges;
 - (g) precast concrete shapes for bridges in public highway systems;
 - (h) structural steel and aluminum for bridges;
 - (i) instruments and materials, not including motor vehicles, aircraft, ships or office equipment, to be used directly and exclusively to detect, measure, record or sample pollutants to water, soil or air;
 - (j) truck chassis for the permanent attachment thereon of equipment, at a price in excess of two thousand dollars per unit, specially designed for use directly for road making or road cleaning; and
 - (k) passenger transportation vehicles and parts therefor, not including vehicles designed to carry less than twelve passengers, for use directly and principally in the operation of a municipal public passenger transportation system, which each day provides a regularly scheduled service to the general public, owned or operated or to be owned or operated by or on behalf of a municipality. R.S.C. 1985, c. 15 (1st Supp.), s. 44; R.S.C. 1985, c. 7 (2nd Supp.), s. 55.

2. Articles and materials for use exclusively in the manufacture of the tax exempt goods mentioned in section 1 of this Part.

PART XIII

PRODUCTION EQUIPMENT, PROCESSING MATERIALS AND PLANS

1. All the following:

- (a) machinery and apparatus sold to or imported by manufacturers or producers for use by them primarily and directly in
 - (i) the manufacture or production of goods,
 - (ii) the development of manufacturing or production processes for use by them, or
 - (iii) the development of goods for manufacture or production by them,
- (b) machinery and apparatus sold to or imported by manufacturers or producers for use by them directly in the detection, measurement, prevention, treatment, reduction or removal of pollutants to water, soil or air attributable to the manufacture or production of goods,
- (b.1) machinery and apparatus for use primarily and directly in the treatment or processing of toxic waste in a toxic waste treatment plant;
- (c) equipment sold to or imported by manufacturers or producers for use by them in carrying refuse or waste from machinery and apparatus used by them directly in the manufacture or production of goods or for use by them for exhausting dust and noxious fumes produced by their manufacturing or producing operations,
- (d) safety devices and equipment sold to or imported by manufacturers or producers for use by them in the prevention of accidents in the manufacture or production of goods.
- (e) self-propelled trucks mounted on rubber-tired wheels for off-highway use exclusively at mines and quarries,
- (f) internal combustion tractors, other than highway truck tractors, for use exclusively in the operation of logging, the operation to include the removal of the log from stump to skidway, log dump, or common or other carrier,
- (g) logging wagons and logging sleds,
- (h) machinery, logging cars, cranes, captive balloons having a volume of four thousand two hundred and forty-eight cubic metres (4 248 m°) or more, blocks and tackle, wire rope and logging boom chain; all the foregoing for use exclusively in the operation of logging, the operation to include the removal of the log from stump to skidway, log dump, or common or other carrier,
- (i) pipes or tubes commonly known as "oil-country goods", being casing or tubing and fittings, couplings, thread protectors and nipples therefor: drill pipe; all of the foregoing for use in connection with natural gas or oil wells,
- (j) machinery and apparatus, including wire rope, drilling bits and seismic shot-hole casing, for use in exploration for or discovery or development of petroleum, natural gas or minerals,
- (k) repair and maintenance equipment sold to or imported by manufacturers or producers for use by them in servicing goods described in paragraphs (a) to (j) that are used by them,
- (1) parts for goods described in paragraphs (a) to (k),
- (m) drilling mud and additives therefor,

- (n) geophysical surveying precision instruments and equipment for use exclusively in prospecting for, or in the exploration and development of, petroleum, natural gas, water wells and minerals, or for geophysical studies for engineering projects, including the following: magnetometers; gravity meters and other instruments designed to measure the elements, variations and distortions of the natural gravitational force; field potentiometers, meggers, non-polarizing electrodes, and electrical equipment for making measurements in drill holes; instruments and equipment for seismic prospecting; geiger muller counters and other instruments for radioactive methods of geophysical prospecting; electrical and electronic amplifying devices and electrical thermostats designed to be used with any of the foregoing; repair parts, tripods and fitted carrying cases for any of the foregoing, and
- (o) articles and materials for use in the manufacture of goods described in paragraphs (a) to (n).

but not including:

- (p) office equipment,
- (q) motor vehicles except those described in paragraphs (e) and (h),
- (r) electric generators and electric alternators that are portable or mobile, including drive motors therefor, and generator and alternator sets that are portable or mobile, except when such generators, alternators or sets are purchased for use on a farm for farm purposes only; stand-by electric generators and stand-by electric alternators, including drive motors therefor, and stand-by generator and stand-by alternator sets, for the production of electricity for use primarily in a building that normally utilizes electricity supplied by a public or private utility where that building is used primarily for activities other than the manufacture or production of goods,
- (s) containers designed for repeated use sold to or imported by manufacturers or producers that are not for use by them exclusively and directly in the manufacture or production of goods,
- (t) goods, including transformers, for use in the transmission or distribution of electricity, other than goods for use within the plant where the electricity is generated or within any other plant where goods, other than electricity, are manufactured or produced, or
- (u) pipes, valves, fittings, pumps, compressors, regulators and equipment ancillary to any such goods, for use in transporting or distributing goods, but not including any such pipes, valves, fittings, pumps, compressors, regulators or equipment for use within a manufacturing or production facility or for use in gathering systems for natural gas, natural gas liquids or oil in natural gas fields or oil fields. R.S.C. 1985, c. 15 (1st Supp.), s. 45; R.S.C. 1985, c. 7 (2nd Supp.), s. 55; R.S.C 1985, c. 12 (4th Supp.), s. 48; S.C. 1989, c. 22, s. 7.
- **2.** Materials, not including grease, lubricating oils or fuel for use in internal combustion engines, consumed or expended by manufacturers or producers directly in
 - (a) the process of manufacture or production of goods;
 - (b) the development of manufacturing or production processes for use by them;
 - (c) the development of goods for manufacture or production by them; or
 - (d) the detection, measurement, prevention, treatment, reduction or removal of pollutants described in paragraph 1(b) of this Part.
 - 3. Plans and drawings, related specifications and substitutes therefor, and reproductions

of any of the foregoing, when sold to or imported by manufacturers or producers for use by them directly in

- (a) the manufacture or production of goods,
- (b) the development of manufacturing or production processes for use by them,
- (c) the development of goods for manufacture or production by them, or
- (d) the detection, measurement, prevention, treatment, reduction or removal of pollutants described in paragraph 1(b) of this Part,

and materials for use exclusively in the manufacture of those plans, drawings, specifications, substitutes or reproductions.

4. Typesetting and composition, metal plates, cylinders, matrices, film, art work, designs, photographs, rubber material, plastic material and paper material, when impressed with or displaying or carrying an image for reproduction by printing, made or imported by or sold to a manufacturer or producer for use exclusively in the manufacture or production of printed matter.

PART XIV

GOODS MANUFACTURED IN INSTITUTIONS

- 1. All goods manufactured or produced in Canada by the labour of individuals who are in any manner mentally or physically handicapped, where a substantial portion of the sale price of the goods is in any way attributable to the labour of those individuals, which labour has been performed in, or exclusively under the control and direction of, a certified institution.
- **2.** For the purpose of section 1 of this Part, "certified institution" means an institution in Canada that has as its main purpose the care of individuals of a class described in that section and that holds a valid certificate that has been issued by the Minister.
- **3.** Articles and materials for use exclusively in the manufacture of the goods mentioned in this Part.

PART XV

CLOTHING AND FOOTWEAR

- 1. Clothing and footwear, including articles and materials for incorporation in home or commercial production thereof, as the Governor in Council may determine by regulation.
- **2.** Articles and materials for use exclusively in the manufacture or production of the tax exempt goods mentioned in section 1 of this Part.

PART XVI

CONSTRUCTION EQUIPMENT

- 1. The following goods (not including motor trucks, other than motor trucks specially designed for off-highway use) where the sale price by the Canadian manufacturer or the duty paid value of the imported article exceeds two thousand dollars per unit:
 - (a) excavation and earthmoving equipment; cranes; hoists and derricks; pile driving equipment; pipe-laying, pipe-wrapping and pipe-welding equipment; air compressors and

pumps; compactors and rollers; attachments for the foregoing; all designed for construction or demolition purposes;

- (b) equipment designed for use directly in the preparation, placing, paving, laying, finishing or spreading of concrete, mortar or asphalt; attachments for the foregoing; and
- (c) repair and replacement parts designed for the equipment referred to in paragraphs (a) and (b). R.S.C. 1985, c. 12 (4th Supp.), s. 49.
- 2. Articles and materials for use exclusively in the manufacture or production of the tax exempt goods mentioned in section 1 of this Part.
- 3. Parts and equipment installed on the tax exempt goods mentioned in paragraphs 1(a) and (b) of this Part prior to the first use of those tax exempt goods.

PART XVII

TRANSPORTATION EQUIPMENT

- 1. Highway truck tractors; highway trucks designed primarily for the carriage of freight with a gross vehicle mass rating, within the meaning given to that expression by regulation of the Governor in Council, of seven thousand two hundred and fifty kilograms (7 250 kg) or more. R.S.C. 1985, c. 15 (1st Supp.), s. 46; R.S.C. 1985, c. 12 (4th Supp.), s. 50.
- 2. Truck trailers, tractor trailers and semi-trailers, designed for the carriage of freight, with a gross vehicle mass rating, within the meaning given to that expression by regulation of the Governor in Council, of seven thousand two hundred and fifty kilograms (7 250 kg) or more; fifth wheel dollies designed for use in converting tractor trailers or semi-trailers to full trailers for highway towing purposes.
- 3. Railway locomotives and railway rolling stock including equipment specially designed for movement on railway tracks; rail flaw detector apparatus for testing rail in railway tracks.
- **4.** Re-usable cargo containers with a capacity of fourteen cubic metres (14 m ³) or greater; refrigeration and heating units therefor.
- 5. Motor vehicles and trackless train systems consisting of a towing unit and one or more towed units, designed and permanently equipped to carry twelve or more passengers, for use exclusively in the provision of such class or classes of passenger transportation services as the Governor in Council may by regulation prescribe.
- **6.** Buses or vans specifically equipped for transporting handicapped persons when for use by public organizations or institutions exclusively for providing transportation to the handicapped, and that would have been capable of carrying twelve or more passengers if equipped in the normal manner.
 - 7. School buses designed to carry twelve or more passengers.
- **8.** Aircraft, parts and equipment therefor, when purchased or imported for use exclusively in the provision of
 - (a) public air transportation of passengers, freight or mail; or
 - (b) air services directly related to
 - (i) the exploration and development of natural resources,
 - (ii) aerial spraying, seeding and pest control,
 - (iii) forestry,
 - (iv) fish cultivation,

PART XVIII—ENERGY CONSERVATION EQUIPMENT Sched. III.1

- (v) aerial construction operations using rotating wing aircraft,
- (vi) aerial fire control, fire protection and fire fighting, or
- (vii) map making operations.
- **9.** Air cushion vehicles and tracked vehicles specially designed to transport twelve or more passengers or three thousand six hundred and twenty-nine kilograms (3 629 kg) or more freight.
- 10. Parts and equipment installed on the tax exempt goods mentioned in sections 1, 2, 4, 5, 6, 7 and 9 of this Part or designed for permanent installation on the tax exempt goods mentioned in section 3 of this Part where the sale price by the Canadian manufacturer or the duty paid value of the imported article exceeds two thousand dollars per unit; all parts and equipment installed on the tax exempt goods mentioned in sections 1, 2, 3, 4, 5, 6, 7 and 9 of this Part prior to the first use of those tax exempt goods; except that parts and equipment installed on the tax exempt goods mentioned in section 1 of this Part are exempted from tax only if they are designed to facilitate the carriage or handling of freight. R.S.C. 1985, c. 12 (4th Supp.), s. 51.
- 11. Ships and other marine vessels, purchased or imported for use exclusively in such marine activities, other than sport or recreation, as the Governor in Council may by regulation prescribe; articles and materials for use exclusively in the manufacture, equipping or repair of those tax exempt goods.
- 12. Articles and materials for use exclusively in the manufacture or production of the tax exempt goods mentioned in sections 1 to 10 of this Part.

PART XVIII

ENERGY CONSERVATION EQUIPMENT [Part XVIII repealed R.S.C. 1985, c. 7 (2nd Supp.), s. 55]

SCHEDULE III.1

GOODS SOLD BY DEEMED MANUFACTURERS OR PRODUCERS

- 1. Feeds, and supplements for addition to feeds, for animals, fish or fowl that are not ordinarily raised to produce, or to be used as, food for human consumption. R.S.C. 1985, c. 12 (4th Supp.), s. 52.
 - 2. Health goods. R.S.C. 1985, c. 12 (4th Supp.), s. 52.
- **3.** Food for human consumption enumerated in paragraphs 1(e) to (m) of Part V of Schedule III. R.S.C. 1985, c. 12 (4th Supp.), s. 52
- **4.** Television receivers (including projection-type television receivers and screens, television tuners and video monitors, other than monitors designed for use exclusively as computer or word processing video display terminals), but not including any such goods designed exclusively for commercial use. R.S.C. 1985, c. 12 (4th Supp.), s. 52.
- 5. Video recorders and players, other than those designed exclusively for commercial use. R.S.C. 1985, c. 12 (4th Supp.), s. 52.
 - 6. Microwave ovens. R.S.C. 1985, c. 12 (4th Supp.), s. 52
 - 7. Products sold as pet litter. R.S.C. 1985, c. 12 (4th Supp.), s. 52.
 - 8. Laundry detergents. S.C. 1989, c. 22, s. 8.

SCHEDULE IV [GOODS SUBJECT TO REDUCED FST RATE BEFORE 1991]

(Section 50)

PART I

CONSTRUCTION MATERIALS

- 1. Bricks; building tile; building blocks curved or shaped; building stone; sidewalk and patio slabs; curbs.
 - 2. Chimneys, chimney caps and built-in fireplaces.
- **3.** Doors, windows and shutters for buildings and other structures and associated hardware not including padlocks; door and window screens and awnings.
- **4.** Electric conducting and telecommunication wire and cable; transformers, circuit breakers and related electrical equipment designed for permanent installation in a system for the supply of electricity.
 - 5. Fire-fighting and fire-detection equipment for installation in buildings.
- **6.** Floor tile and hard surface composition yardage flooring for permanent bonding to floors and underlay therefor; materials to be incorporated in terrazzo flooring.
 - 7. Glass for buildings and other structures.
 - **8.** Hard surface plastic laminated building materials.
- **9.** Hot water tanks and water heaters for permanent installation in water systems for buildings.
- 10. Kitchen and bathroom cabinets and countertops therefor, for permanent installation in buildings.
- 11. Lumber; plywood; sash; shingles; lath; siding; stairways; walkways; fire escapes; railway ties; light standards, towers and similar construction components; cornice, frieze, pilasters and other such building components, not including assembled or unassembled furniture.
 - 12. Materials for waterproofing and moisture-proofing buildings, but not including
 - (a) paints, varnishes, stains and similar coatings and finishes;
 - (b) creosote oil and other wood preservatives; or
 - (c) additives for the goods described in paragraphs (a) and (b). R.S.C. 1985, c. 12 (4th Supp.), s. 53.
 - 13. Nails, spikes, screws, nuts, bolts and washers, rivets and similar fasteners.
 - 14. [Repealed R.S.C. 1985, c. 12 (4th Supp.), s. 54.]
 - 15. Piles for structures.
- **16.** Pipe, conduit and tubing designed for use in buildings, sewers, irrigation or drainage systems, pipelines and other construction; valves and fittings therefor.
- 17. Plaster; lime; cement and additives for concrete; prepared dry concrete and mortar mixes.

- 18. Plaster boards, fibreboards, wall panels, building paper and other materials for ceilings and walls and materials for insulation or acoustical purposes, but not including
 - (a) carpeting; or
 - (b) wallpaper and similar coverings for interior walls, R.S.C. 1985, c. 12 (4th Supp.), s. 55.
 - 19. Septic tanks and grease traps therefor; sump pumps.
- **20.** Shower baths, bathtubs, basins, faucets, closets, lavatories, urinals, sinks and rims therefor and laundry tubs; parts for the foregoing.
 - 21. Structural metal and fabricated metal for buildings and other structures.
- **22.** Tar; asphalt; roofing materials and components including eavestroughing and downspouts.
 - 23. Ventilators and louvres.
- **24.** Heat pumps, when designed for use in permanently installed heating systems for buildings. R.S.C. 1985, c. 7 (2nd Supp.), s. 56.
- 25. Heat recovery units and devices for extracting heat from exhaust air or waste water for ecovery of energy. R.S.C. 1985, c. 7 (2nd Supp.), s. 56.
- **26.** Solar panels and tubes designed for collecting and converting solar energy into heat or use in solar heating systems. R.S.C. 1985, c. 7 (2nd Supp.), s. 56.
- **27.** Thermal insulation designed for pipes and ducts used in buildings and mechanical ystems; wrapping materials designed exclusively for use with such insulation. R.S.C. 1985, :. 7 (2nd Supp.), s. 56.
- **28.** Wood-burning stoves and wood-burning space heaters. R.S.C. 1985, c. 7 (2nd Supp.), **. 56.**
- **29.** Loading dock seals and shelters designed to conserve heated or refrigerated air during oading and unloading. R.S.C. 1985, c. 7 (2nd Supp.), s. 56.
 - 30. Mobile homes and modular building units. R.S.C. 1985, c. 7 (2nd Supp.), s. 56.
- **31.** Buildings or other structures manufactured or produced by a person otherwise than at he site of construction or erection thereof in competition with persons who construct or erectimilar buildings or structures not so manufactured or produced. R.S.C. 1985, c. 7 (2nd Supp.), . **56**.
- **32.** Structural building sections, for incorporation into buildings or other structures nanufactured or produced by a person otherwise than at the site of construction or erection of ne building or other structure in competition with persons who construct or erect buildings or ther structures that incorporate similar sections not so manufactured or produced. R.S.C. 985, c. 7 (2nd Supp.), s. 56.
 - 33. Ready-mix concrete. R.S.C. 1985, c. 7 (2nd Supp.), s. 56.
 - 34. Asphalt paving mixtures. R.S.C. 1985, c. 7 (2nd Supp.), s. 56.
- **35.** Such additional articles and materials as are prescribed by regulation of the Governor 1 Council to be construction materials. R.S.C. 1985, c. 7 (2nd Supp.), s. 56.

PART II

EQUIPMENT FOR BUILDINGS

- 1. Ash handling and fuel handling equipment, blowers, circulating pumps, fuel tanks, furnaces, stokers, oil or gas burners, hot water and steam radiators, thermostats, regulators, all the foregoing when designed for use in permanently installed heating systems for buildings.
- 2. Ducts for warm air, ventilating and air conditioning systems for buildings; equipment designed for use on those systems using five hundred and fifty volts or greater.
- 3. Electric heating equipment designed for use on a system using two hundred volts or greater, for permanent installation as part of an electric heating system for buildings.
 - 4. Elevators and escalators and parts therefor.
- 5. Such additional articles and materials as are prescribed by regulation of the Governor in Council to be equipment designed primarily for use in buildings.

SCHEDULE V EXEMPT SUPPLIES

(Subsection 123(1))

PART I

REAL PROPERTY

- **1.** In this Part, "improvement", in respect of real property of a person, means any property or service supplied to, or goods imported by, the person for the purpose of improving the real property, to the extent that the consideration paid or payable by the person for the property or service or the value of the goods is, or would be if the person were a taxpayer under the *Income Tax Act*, included in determining the cost or, in the case of real property that is capital property of the person, the adjusted cost base to the person of the property for the purposes of that Act. S.C. 1990, c. 45, s. 18.
- 2. A supply by way of sale of a residential complex or an interest therein made by a person who is not a builder of the complex or, where the complex is a multiple unit residential complex, an addition thereto, unless the person claimed an input tax credit in respect of the last acquisition by the person of the complex, or in respect of the acquisition or importation by the person, after the complex was last acquired by the person, of an improvement to the complex. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 147.
- 3. A supply by way of sale of a residential complex or an interest therein made by an individual who is a builder of the complex or, where the complex is a multiple unit residential complex, an addition thereto, if
 - (a) at any time after the construction or substantial renovation of the complex or addition is substantially completed, the complex is used primarily as a place of residence of the individual, an individual related to the individual or a former spouse of the individual, and
 - (b) the complex is not used primarily for any other purpose after the construction or substantial renovation is substantially completed and before that time,

unless the individual claimed an input tax credit in respect of the last acquisition by the

individual of the real property included in the complex or in respect of the acquisition or importation by the individual, after the real property was last acquired by the individual, of an improvement to the real property. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 147.

- **4.** A supply by way of sale of a single unit residential complex (in this section referred to as the "complex") or a residential condominium unit (in this section referred to as the "unit") or an interest in the complex or unit made by a builder of the complex or unit where
 - (a) in the case of a unit situated in a residential complex (in this section referred to as the "premises") that was converted by the builder from use as a multiple unit residential complex to use as a condominium complex, the builder received an exempt supply of the premises by way of sale or was deemed under subsection 191(3) of the Act to have received a taxable supply of the premises by way of sale, and that supply was the last supply of the premises made by way of sale to the builder, or
 - (b) in any case, the builder received an exempt supply of the complex or unit by way of sale or was deemed under subsection 191(1) or (2) of the Act to have received a taxable supply of the complex or unit by way of sale, and that supply was the last supply of the complex or unit made by way of sale to the builder,

unless

- (c) after the complex, unit or premises were last acquired by the builder, the builder carried on, or engaged another person to carry on for the builder, the substantial renovation of the complex, unit or premises, or
- (d) the builder claimed an input tax credit in respect of the last acquisition by the builder of the complex, unit or premises or in respect of the acquisition or importation by the builder, after the complex, unit or premises were last acquired by the builder, of an improvement to the complex, unit or premises.
- **5.** A supply by way of sale of a multiple unit residential complex or an interest therein made by a person who is a builder of the complex or an addition thereto where
 - (a) in the case of a person who is a builder of the complex, the person received an exempt supply of the complex by way of sale, or was deemed under subsection 191(3) of the Act to have received a taxable supply of the complex by way of sale, and that supply was the last supply of the complex made by way of sale to the person, and
 - (b) in the case of a person who is a builder of an addition to the complex, the person received an exempt supply of the addition by way of sale, or was deemed under subsection 191(4) of the Act to have received a taxable supply of the addition by way of sale, and that supply was the last supply of the addition made by way of sale to the person.

unless

- (c) after the complex was last supplied to the person, the person carried on, or engaged another person to carry on for the person, the substantial renovation of the complex, or
- (d) the person claimed an input tax credit in respect of the last acquisition by the person of the complex or an addition thereto or in respect of the acquisition or importation by the person, after the complex was last acquired by the person, of an improvement to the complex, other than an input tax credit in respect of the construction of an addition to the complex. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 147.
- **5.1** A supply by way of sale of a building, or that part of a building, in which one or more residential units are located, or an interest in such a building or part, where
 - (a) both immediately before and immediately after the earlier of the time ownership of the

building, part or interest is transferred to the recipient of the supply (in this section referred to as the "purchaser") and the time possession thereof is transferred to the purchaser under the agreement for the supply, the building or part forms part of a residential complex; and

- (b) immediately after the earlier of the time ownership of the building, part or interest is transferred to the purchaser and the time possession thereof is transferred to the purchaser under the agreement for the supply, the purchaser is a recipient described in subparagraph 7(a)(i) of an exempt supply, described by paragraph 7(a), of the land included in the complex. S.C. 1993, c. 27, s. 147.
- **5.2** A supply by way of sale of land that forms part of a residential complex or an interest in such land where
 - (a) immediately before the earlier of the time ownership thereof is transferred to the recipient of the supply and the time possession thereof is transferred to the recipient of the supply under the agreement for the supply, the land is subject to a lease, licence or similar arrangement by which a supply that is an exempt supply described by paragraph 7(a) was made; and
 - (b) if a supply by way of sale were made of the residential complex immediately before that earlier time, the supply would be an exempt supply described in any of sections 2 to 5. S.C. 1993, c. 27, s. 147.
 - 5.3 A supply of a residential trailer park or an interest therein made by a person where
 - (a) the person received an exempt supply, described by this section, of the park or was deemed under subsection 190(4), 200(2), 206(4) or 207(1) of the Act to have received a taxable supply of the land included in the park as a consequence of using the land for purposes of the park, and that supply was the last supply of the park made by way of sale to the person, and
 - (b) if the person increased the area of land included in the park, the person received an exempt supply, described by this section, of the area of land by which the park was increased (in this section referred to as the "additional area") or was deemed under subsection 190(5), 200(2), 206(4) or 207(1) of the Act to have made a taxable supply of the additional area as a consequence of using the additional area for purposes of the park, and that supply was the last supply of the additional area made by way of sale to the person,

unless the person claimed an input tax credit in respect of the last acquisition by the person of the park or an additional area thereof or in respect of the acquisition or importation by the person, after the park was last acquired by the person, of an improvement to the park, other than an input tax credit in respect of an improvement to an additional area that was acquired or imported by the person before the additional area was last acquired by the person. S.C. 1993, c. 27, s. 147.

6. A supply

- (a) of a residential complex or a residential unit in a residential complex by way of lease, licence or similar arrangement for the purpose of its occupancy as a place of residence or lodging by an individual, where it is occupied by the same individual for a period of at least one month; or
- (b) of a residential unit by way of lease, licence or similar arrangement for the purpose of its occupancy as a place of residence or lodging by an individual, where the consideration

for the supply does not exceed \$20 for each day of occupancy. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 147.

- 6.1 A supply of property that is
- (a) land,
- (b) a building, or that part of a building, that forms part of a residential complex, or
- (c) a residential complex,

made by way of lease, licence or similar arrangement for a lease interval (within the meaning assigned by subsection 136(2.1) of the Act) throughout which the lessee or any sub-lessee makes, or holds the property for the purpose of making, one or more supplies of the property or parts of the property and all or substantially all of those supplies

- (d) are exempt supplies described by section 6 or 7, or
- (e) are supplies that are made, or are reasonably expected to be made, to other lessees or sub-lessees described in this section, S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 148.
- **6.2** A supply of meals made by a person who is making a supply, described by paragraph **6(a)**, of a residential complex or unit where the meals are provided, to the occupant of the complex or unit, in the complex or unit or in the residential complex in which the unit is located under an arrangement whereby at least 10 meals per week are supplied for a single consideration determined before any meal is provided under the arrangement. S.C. 1993, c. 27, s. 149.

7. A supply

- (a) of land (other than a site in a residential trailer park) by way of lease, licence or similar arrangement for a period of at least one month, made to
 - (i) the owner, lessee or person in occupation or possession of a residential unit that is or is to be affixed to the land for the purpose of its use and enjoyment as a place of residence for individuals, or
 - (ii) a person who is acquiring possession of the land for the purpose of constructing a residential complex on it in the course of a commercial activity,
- (b) of a site in a residential trailer park by way of lease, licence or similar arrangement for a period of at least one month, made to the owner, lessee or person in occupation or possession of
 - (i) a mobile home, or
 - (ii) a travel trailer, motor home or similar vehicle or trailer,

situated or to be situated on the site, or

(c) of a lease, licence or similar arrangement referred to in paragraph (a) or (b) by way of assignment,

but not including any land on which the residential unit, mobile home, vehicle or trailer is or is to be affixed or situated, or any land contiguous to it, that is not reasonably necessary for the use and enjoyment of the unit, home, vehicle or trailer as a place of residence for individuals. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 150.

- **8.** A supply by way of sale of a parking space in a condominum complex made by a supplier to a person where
 - (a) the supplier, at the same time or as part of the same supply, makes a supply, included in any of sections 2 to 4, that is made by way of sale to the person of a residential condominium unit in the condominium complex; and

- (b) the space was, at any time, supplied to the supplier by way of sale and the supplier did not, after that time, claim an input tax credit in respect of the acquisition or importation of an improvement to the space. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 150; S.C. 1994, c. 9, s. 35(a).
- **8.1** A supply by way of lease, licence or similar arrangement of a parking space for a period of at least one month
 - (a) made to a person (in this paragraph referred to as an "occupier") who is a lessee or person in occupation or possession of a single unit residential complex, a residential unit in a multiple unit residential complex or a site in a residential trailer park where
 - (i) the space forms part of the residential complex or residential trailer park, as the case may be, or
 - (ii) the supplier of the space is an owner or occupier of the single unit residential complex, residential unit or site, as the case may be, and the use of the space is incidental to the use and enjoyment of the complex, unit or site, as the case may be, as a place of residence for individuals;
 - (b) made to the owner, lessee or person in occupation or possession of a residential condominium unit in a condominium complex where the space forms part of the complex; or
 - (c) made by a supplier to the owner, lessee or person in occupation or possession of a floating home where the home is moored to mooring facilities or a wharf under an agreement with the supplier for a supply that is an exempt supply described in section 13.2 and the use of the space is incidental to the use and enjoyment of the home as a place of residence for individuals. S.C. 1993, c. 27, s. 150; S.C. 1994, c. 9, s. 35(b).
- **9.** A supply of real property made by way of sale by an individual or a trust, all the beneficiaries (other than contingent beneficiaries) of which are individuals and all the contingent beneficiaries of which, if any, are individuals or charities, other than
 - (a) a supply of real property that is, immediately before the time ownership or possession of the property is transferred to the recipient of the supply under the agreement for the supply, capital property used primarily in a business of the individual or trust;
 - (b) a supply of real property made
 - (i) in the course of a business of the individual or trust, or

is related to or who is a former spouse of the individual where

- (ii) where the individual or trust has filed an election with the Minister in prescribed form and manner and containing prescribed information, in the course of an adventure or concern in the nature of trade of the individual or trust;
- (c) a supply deemed under section 206 or 207 of the Act to have been made; or
- (d) a supply of a residential complex. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 151.
- 10. A supply of farmland by way of sale made by an individual to another individual who
 - (a) the farmland was used at any time by the individual in a commercial activity that is the business of farming;
 - (b) the farmland was not used, immediately before the time ownership of the property is transferred under the supply, by the individual in a commercial activity other than the business of farming; and

- (c) the other individual is acquiring the farmland for the personal use and enjoyment of that other individual or any individual related thereto. S.C. 1990, c. 45, s. 18.
- 11. A supply by an individual of farmland deemed under subsection 190(2) or 207(1) of the Act to have been made where
 - (a) the farmland was used at any time by the individual in a commercial activity that is the business of farming;
 - (b) the farmland was not used, immediately before the time the supply is deemed to have been made, by the individual in a commercial activity other than the business of farming; and
 - (c) the farmland is, immediately after the time the supply is deemed to have been made, for the personal use and enjoyment of the individual or an individual related thereto. S.C. 1990, c. 45, s. 18.
- 12. A supply of farmland by way of sale made to a particular individual, an individual related to the particular individual or a former spouse of the particular individual by a person that is a corporation, partnership or trust where
 - (a) immediately before the time ownership of the property is transferred under the supply.
 - (i) all or substantially all of the property of the person is used in a commercial activity that is the business of farming,
 - (ii) the particular individual is a member of the partnership, a beneficiary of the trust or a shareholder of or related to the corporation, as the case may be, and
 - (iii) the particular individual, the spouse of the particular individual or a child (within the meaning of paragraph 70(10)(a) of the $Income\ Tax\ Act$) of the particular individual is actively engaged in the business of the person; and
 - (b) immediately after the time ownership of the property is transferred under the supply, the farmland is for the personal use and enjoyment of the individual to whom the supply was made or an individual related thereto. S.C. 1990, c. 45, s. 18.
- 13. A supply made by a condominium corporation to the owner or lessee of a residential condominium unit in the condominium complex managed by the condominium corporation of property or a service relating to the occupancy or use of the unit. S.C. 1990, c. 45, s. 18.
- 13.1 A supply of property or a service made by a cooperative housing corporation to a person who, because the person is a shareholder of the corporation or a lessee or sub-lessee of a shareholder of the corporation, is entitled to occupy or use a residential unit in a residential complex managed or owned by the corporation, where the supply relates to the occupancy or use of a residential unit in the complex. S.C. 1993, c. 27, s. 152.
- 13.2 A supply, made to a person who is the owner, lessee or person in occupation or possession of a floating home, of a right to use mooring facilities or a wharf for a period of at least one month in connection with the use and enjoyment of the home as a place of residence for individuals. S.C. 1993, c. 27, s. 152.
- 14. Subsections 190(4) and (5) and section 191 of the Act shall, for the purposes of applying sections 4, 5, 5.2 and 5.3, be deemed to have been in force at all times. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 152.

PART II

HEALTH CARE SERVICES

1. In this Part,

- "health care facility".—"health care facility" means
 - (a) a facility, or a part thereof, operated for the purpose of providing medical or hospital care, including acute, rehabilitative or chronic care,
 - (b) a hospital or institution primarily for the mentally disordered, or
 - (c) a facility, or a part thereof, operated for the purpose of providing residents of the facility who have limited physical or mental capacity for self-supervision and self-care with
 - (i) nursing and personal care under the direction or supervision of qualified medical and nursing care staff or other personal and supervisory care (other than domestic services of an ordinary household nature) according to the individual requirements of the residents,
 - (ii) assistance with the activities of daily living and social, recreational and other related services to meet the psycho-social needs of the residents, and
 - (iii) meals and accommodation;
- "homemaker service".— "homemaker service" means a household or personal service, such as cleaning, laundering, meal preparation and child care, that is rendered to an individual who, due to age, infirmity or disability, requires assistance;
- "institutional health care service".—"institutional health care service" means any of the following when provided in a health care facility:
 - (a) laboratory, radiological or other diagnostic services,
 - (b) drugs, biologicals or related preparations when administered, or a medical or surgical prosthesis when installed, in the facility in conjunction with the supply of a service included in any of paragraphs (a) and (c) to (g),
 - (c) the use of operating rooms, case rooms or anaesthetic facilities, including necessary equipment or supplies,
 - (d) medical or surgical equipment or supplies
 - (i) used by the operator of the facility in providing a service included in any of paragraphs (a) to (c) and (e) to (g), or
 - (ii) supplied to a patient or resident of the facility otherwise than by way of sale,
 - (e) the use of radiotherapy, physiotherapy or occupational therapy facilities,
 - (f) accommodation,
 - (g) meals (other than meals served in a restaurant, cafeteria or similar eating establishment), and
 - (h) services rendered by persons who receive remuneration therefor from the operator of the facility;
- "insured person".—"insured person" has the same meaning as in the Canada Health Act;
- "medical practitioner".—"medical practitioner" means a person who is entitled under the laws of a province to practise the profession of medicine or dentistry;

- **practitioner".**—"practitioner", in respect of a supply of optometric, chiropractic, physiotherapy, chiropodic, podiatric, osteopathic, audiological, speech-therapy, occupational therapy, or psychological services, means a person who
 - (a) is licensed or otherwise certified to practise the profession of optometry, chiropractic, physiotherapy, chiropody, podiatry, osteopathy, audiology, speech-therapy, occupational therapy, or psychology in the province in which the service is supplied, or
 - (b) where the person is not required to be licensed or otherwise certified to practise the profession of the person in the province in which the service is supplied, has the qualifications equivalent to those necessary to be so licensed or otherwise certified in another province, and
 - (c) in respect of the supply of psychological services, is registered in the Canadian Register of Health Service Providers in Psychology,
 - and practises the profession of optometry, chiropractic, physiotherapy, chiropody, podiatry, osteopathy, audiology, speech-therapy, occupational therapy, or psychology, as the case may be. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 153; S.C. 1994, c. 9, s. 25.
- 2. A supply of an institutional health care service made by the operator of a health care acility to a patient or resident of the facility, but not including a service related to the provision of a surgical or dental service that is performed for cosmetic purposes and not for medical or econstructive purposes, S.C. 1990, c. 45, s. 18.
- **3.** A supply made by the operator of a health care facility by way of lease of medical quipment or supplies to a consumer on the written order of a medical practitioner. S.C. 1990, 45, s. 18.
- **4.** A supply of an ambulance service made by a person who carries on the business of upplying ambulance services. S.C. 1990, c. 45, s. 18.
- **5.** A supply made by a medical practitioner of a consultative, diagnostic, treatment or other health care service rendered to an individual (other than a surgical or dental service that is performed for cosmetic purposes and not for medical or reconstructive purposes). S.C. 1990, a. 45, s. 18.
- **6.** A supply of a nursing service rendered by a registered nurse, a registered nursing assistant or a licensed practical nurse, where
 - (a) the service is rendered to an individual in a health care facility or in the individual's place of residence;
 - (b) the service is a private-duty nursing service; or
 - (c) the supply is made to a public sector body. S.C. 1990, c. 45, s. 18.
- 7. A supply of any of the following services when rendered to an individual, where the supply is made by a practitioner of the service:
 - (a) optometric services;
 - (b) chiropractic services;
 - (c) physiotherapy services;
 - (d) chiropodic services;
 - (e) podiatric services;
 - (f) osteopathic services;
 - (g) audiological services;

- (h) speech-therapy services;
- (i) occupational therapy services; and
- (j) psychological services. S.C. 1990, c. 45, s. 18.
- 8. A supply of a dental hygienist service. S.C. 1990, c. 45, s. 18.
- **9.** A supply (other than a zero-rated supply) of any property or service but only if, and to the extent that, the consideration for the supply is payable or reimbursed by the government of a province under a plan established under an Act of the legislature of the province to provide for health care services for all insured persons of the province. S.C. 1990, c. 45, s. 18; S.C. 1994, c. 9, s. 26.
- 10. A supply of a prescribed diagnostic, treatment or other health care service when made on the order of a medical practitioner or practitioner. S.C. 1990, c. 45, s. 18.
- 11. A supply of food and beverages, including the services of a caterer, made to an operator of a health care facility under a contract to provide on a regular basis meals for the patients or residents of the facility. S.C. 1990, c. 45, s. 18.
 - 12. A supply of a psychoanalytic service made by a person who
 - (a) has received the same training in the provision of psychoanalytic services from the same training institute as medical practitioners who provide psychoanalytic services; and
 - (b) is a member in good standing of the professional society in respect of the provision of psychoanalytic services in Canada that
 - (i) sets and maintains the same standards of practice and conduct in respect of all members of the society, and
 - (ii) consists of at least 300 members in Canada of which at least 2/3 are medical practitioners. S.C. 1990, c. 45, s. 18.
- 13. A supply of a homemaker service that is rendered to an individual in the individual's place of residence, whether the recipient of the supply is the individual or any other person, where
 - (a) the supplier is a government or municipality;
 - (b) a government, municipality or organization administering a government or municipal program in respect of homemaker services pays an amount
 - (i) to the supplier in respect of the supply, or
 - (ii) to any person for the purpose of the acquisition of the service; or
 - (c) another supply of a homemaker service rendered to the individual is made in the circumstances described in paragraph (a) or (b). S.C. 1993, c. 27, s. 154; S.C. 1994, c. 9, s. 27.

PART III

EDUCATIONAL SERVICES

- 1. In this Part.
- "elementary or secondary school student".—"elementary or secondary school student" means an individual who is enrolled in a school that is operated by a school authority in a province and in
 - (a) courses that are at the elementary level of education, or

(b) courses for which credit may be obtained toward a diploma or certificate issued or approved by the government of the province or courses equivalent to such courses;

"provincial regulatory body".--[Repealed.]

- "regulatory body".—"regulatory body" means a body that is constituted or empowered by an Act of Parliament or of the legislature of a province to regulate the practice of a profession or trade by setting standards of knowledge and proficiency for practitioners of the profession or trade;
- "vocational school".—"vocational school" means an organization that is established and operated primarily to provide students with
 - (a) correspondence courses, or
 - (b) instruction in courses
- that develop or enhance students' occupational skills and includes an educational institution that is certified by the Minister of Employment and Immigration for the purposes of subsection 118.5(1) of the *Income Tax Act*. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 155.
- **2.** A supply made by a school authority in a province of a service of instructing individuals in a course that is provided primarily for elementary or secondary school students. S.C. 1990, c. 45, s. 18.
- **3.** A supply of food, beverages or services, including admissions, made by a school authority primarily to elementary or secondary school students during the course of extracurricular activities organized under the authority and responsibility of the school authority. **5.**C. 1990, c. 45, s. 18.
- **4.** A supply made by a school authority of a service performed by an elementary or secondary school student or by an instructor of an elementary or secondary school student in the ordinary course of the instruction of the student. S.C. 1990, c. 45, s. 18.
- **5.** A supply made by a school authority to elementary or secondary school students of a service of transporting the students to or from a school that is operated by a school authority. **S.C.** 1990, c. 45, s. 18.

6. A supply of

- (a) a service of instructing individuals in courses leading to, or for the purpose of maintaining or upgrading, a professional or trade accreditation or designation recognized by a regulatory body, or
- (b) a certificate, or a service of administering an examination, in respect of a course, or in respect of an accreditation or designation described in paragraph (a).
- where the supply is made by a professional or trade association, government, vocational school, university or public college or by the regulatory body, except where the supplier has made an election under this section in prescribed form containing prescribed information. S.C. 1990, c. 45, s. 18;; S.C. 1993, c. 27, s. 156.
- **7.** A supply made by a school authority, public college or university of a service of instructing individuals in, or administering examinations in respect of, courses for which credit may be obtained toward a diploma or degree, S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 157.
- **7.1** A supply of a service or membership the consideration for which is required to be paid by the recipient of a supply included in section 7 because the recipient receives the supply included in section 7. S.C. 1993, c. 27, s. 158.
 - 8. A supply, other than a zero-rated supply, made by a school authority, vocational school,

public college or university of a service of instructing individuals in, or administering examinations in respect of, courses leading to certificates, diplomas, licences or similar documents, or classes or ratings in respect of licences, that attest to the competence of individuals to practise or perform a trade or vocation where

- (a) the document, class or rating is prescribed by federal or provincial regulation;
- (b) the supplier is governed by federal or provincial legislation respecting vocational schools; or
- (c) the supplier is a non-profit organization or a charity. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 159.
- 9. A supply of a service of tutoring or instructing an individual in
- (a) a course that is approved for credit by, or that follows a curriculum designated by, a school authority;
- (b) a course that is a prescribed equivalent of a course described in paragraph (a); or
- (c) a course the successful completion of which is mandatory for admittance into a particular course described in paragraph (a) or (b) and not for admittance into any other course that is a prerequisite to the particular course. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 160.
- 10. [Added S.C. 1990, c. 45, s. 18; repealed S.C. 1993, c. 27, s. 160.]
- 11. A supply of a service of instructing individuals in, or administering examinations in respect of, language courses that form part of a program of second-language instruction in either English or French, where the supply is made by a school authority, public college or university or an organization that is established and operated primarily to provide instruction in languages. S.C. 1990, c. 45, s. 18.
- 12. A supply of food or beverages (other than prescribed food or beverages or food or beverages supplied through a vending machine) where the supply is made in an elementary or secondary school cafeteria primarily to students of the school, except where the supply is for a private party, reception, meeting or similar private event. S.C. 1990, c. 45, s. 18.
- 13. A supply of a meal at a university or public college to a student where the meal is provided under a plan under which the student purchases from the supplier for a single consideration a supply of not less than 10 meals weekly for a period of not less than one month. S.C. 1990, c. 45, s. 18.
- 14. A supply of food and beverages, including catering services, made to a person that is a school authority, university, or public college under a contract to provide food or beverages
 - (a) to students under a plan referred to in section 13; or
- (b) in an elementary or secondary school cafeteria primarily to students of the school, except to the extent that the food, beverages and services are provided for a reception, conference or other special occasion or event. S.C. 1990, c. 45, s. 18.
- **15.** A supply of personal property made by way of lease by a school authority to an elementary or secondary school student. S.C. 1990, c. 45, s. 18.
- **16.** A supply made by a school authority, public college or university of a service of instructing individuals in, or administering examinations in respect of, courses (other than courses in sports, games, hobbies or other recreational pursuits that are designed to be taken primarily for recreational purposes) that are part of a program that consists of two or more courses and that is subject to the review of, and is approved by, a council, board or committee of

the school authority, college or university established to review and approve the course offerings of the school authority, college or university. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 161.

PART IV

CHILD AND PERSONAL CARE SERVICES

- 1. A supply of child care services, the primary purpose of which is to provide care and supervision to children 14 years of age or under for periods normally less than 24 hours per day. S.C. 1990, c. 45, s. 18.
- **2.** A supply of a service of providing care, supervision and a place of residence to children or disabled or underprivileged individuals in an establishment operated by the supplier for the purpose of providing such service. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 162.

PART V

LEGAL AID SERVICES

1. A supply of legal services provided under a legal aid plan administered by or under the authority of a government of a province made by the person responsible for administering the plan. S.C. 1990, c. 45, s. 18.

PART VI

PUBLIC SECTOR BODIES

- 1. In this Part,
- "designated activity".—"designated activity" of an organization means an activity in respect of which the organization is designated under section 259 of the Act or under section 22 or 23;
- "direct cost".—"direct cost" of a film, slide show or similar presentation or of a supply of tangible personal property or a service means the total of all amounts each of which is the value of consideration paid or payable by the supplier
 - (a) of admissions in respect of the presentation, or
 - (b) of the property or service,
 - for an article or material (other than capital property of the supplier) that was purchased by the supplier, to the extent that the article or material is to be incorporated into or is to form a constituent or component part of the property or is to be consumed or expended directly in staging the presentation, supplying the service or in the process of manufacturing, producing, processing or packaging the property, and includes
 - (c) in the case of a supply of property or a service that was previously purchased by the supplier, the value of consideration paid or payable by the supplier for the property or service, and
 - (d) in the case of a film, slide show or similar presentation, the total of all amounts each of which is the value of consideration paid or payable by the supplier of admissions in respect of the presentation for the rental of, or right to use, any film, slide or similar property or projector or similar equipment used for the presentation,

and, for the purposes of this definition, the consideration paid or payable by a supplier for property or a service shall be deemed to include the amount, if any, by which the tax payable by the supplier in respect of the property or service exceeds the total of all amounts each of which is an input tax credit of the supplier or a rebate under Part IX of the Act that the supplier has claimed or is entitled to claim in respect of the property or service;

- "homemaker service".—[Repealed]
- "local municipality".—"local municipality" of a regional municipality means a municipality that has jurisdiction over an area that is within the area over which the regional municipality has jurisdiction;
- "municipal body".—"municipal body" means a municipality or a provincially established designated body;
- "municipal transit service".—"municipal transit service" means a public passenger transportation service (other than a charter service or a service that is part of a tour) that is supplied by a transit authority all or substantially all of whose supplies are of public passenger transportation services provided within a particular municipality and its environs;
- "para-municipal organization".—"para-municipal organization" of a municipal body means an organization (other than a government) that is owned or controlled by the municipal body and that
 - (a) where the municipal body is a municipality,
 - (i) is designated under section 259 of the Act, or under section 22 or 23, to be a municipality for the purposes of that section, or
 - (ii) is established by the municipal body and determined, under paragraph (b) of the definition "municipality" in subsection 123(1) of the Act, to be a municipality for the purposes of Part IX of the Act, or
 - (b) where the municipal body is a provincially established designated body, is determined under that paragraph to be a municipality for the purposes of that Part,
 - and for the purposes of this definition, an organization is owned or controlled by a municipal body if
 - (c) all or substantially all of the shares of the organization are owned by the municipal body or all or substantially all of the assets held by the organization are owned by the municipal body or are assets the disposition of which is controlled by the municipal body so that, in the event of a winding-up or liquidation of the organization, those assets are vested in the municipal body, or
 - (d) the organization is required to submit to the municipal body the periodic operating and, where applicable, capital budget of the organization for approval and a majority of the members of the governing body of the organization are appointed by the municipal body;
- "provincially established designated body".—"provincially established designated body" means a body that is established by Her Majesty in right of a province and designated, under section 259 of the Act, to be a municipality for the purposes of that section;
- "transit authority".—"transit authority" means
 - (a) a division, department or agency of a government, municipality or school authority, the primary purpose of which is to supply public passenger transportation services, or

- (b) a non-profit organization that
 - (i) receives funding from a government, municipality or school authority to support the supply of public passenger transportation services, or
 - (ii) is established and operated for the purpose of providing public passenger transportation services to disabled individuals, S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 163.
- **2.** A supply made by a charity of any personal property or a service, but not including a supply of
 - (a) property or a service included in Schedule VI;
 - (b) property or a service the supply of which is deemed under Part IX (other than section 133) of the Act to have been made by the charity;
 - (c) property (other than capital property of the charity or property that was acquired, manufactured or produced by the charity for the purpose of making a supply of the property) where, immediately before the time tax would be payable in respect of the supply if it were a taxable supply, the property was used (otherwise than in making the supply) in commercial activities of the charity;
 - (d) capital property of the charity where, immediately before the time tax would be payable in respect of the supply if it were a taxable supply, the property was used (otherwise than in making the supply) primarily in commercial activities of the charity:
 - (e) tangible property that was acquired, manufactured or produced by the charity for the purpose of making a supply of the property and was neither donated to the charity nor used by another person before its acquisition by the charity, or any service supplied by the charity in respect of such property, other than such property or such a service supplied by the charity under a contract for catering;
 - (f) property made by way of lease, licence or similar arrangement in conjunction with a supply of real property included in paragraph 25(f);
 - (g) property or a service made by the charity under a contract for catering for an event or occasion sponsored or arranged by another person who contracts with the charity for catering;
 - (h) a membership where the membership
 - (i) entitles the member to supplies of admissions in respect of a place of amusement that would be taxable supplies if they were made separately from the supply of the membership, or to discounts on the value of consideration for such supplies, or
 - (ii) includes a right to participate in a recreational or athletic activity, or use facilities, at a place of amusement,

except where the value of the supplies, discounts or right described in subparagraph (i) or (ii) is insignificant in relation to the consideration for the membership:

- (i) services of performing artists in a performance where the supply is made to a person who makes taxable supplies of admissions in respect of the performance:
- (j) a service involving, or a membership or other right entitling a person to, supervision or instruction in any recreational or athletic activity;
- (k) a right to play or participate in a game of chance;
- (1) a service of instructing individuals in, or administering examinations in respect of, any course where the supply is made by a vocational school, as defined in section 1 of Part III, or a school authority, public college or university; or

- (m) an admission in respect of
 - (i) a place of amusement,
 - (ii) a seminar, conference or similar event where the supply is made by a university or public college, or
 - (iii) any fund-raising event held after April 1991. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 164; S.C. 1994, c. 9, c. 28.
- 3. A supply made by a charity of any property or service where
- (a) the supply is made in the course of a business of making supplies of such property or such a service or of similar property or services carried on by the charity, and the day-to-day administrative functions and other functions performed in carrying on the business are performed exclusively by volunteers,
- (b) the supply is made in the course of an activity engaged in by the charity otherwise than in the course of, or as part of, a business referred to in paragraph (a), and the day-to-day administrative functions and other functions performed in carrying on the activity, including the provision of any property or service in the course of the activity, are performed exclusively by volunteers, or
- (c) the property or service is, and is represented to prospective recipients to be, supplied as part of a program established by the charity that consists of a series of classes or other activities and the non-administrative functions performed in providing the activities are performed exclusively by volunteers,

but not including a supply of

- (d) property or a service included in paragraph 2(a), (b), (c), (d) or (k),
- (e) an admission in respect of a place of amusement at which the principal activity is the placing of bets or the playing of games of chance, or
- (f) real property made by way of sale. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 165.
- **4.** A supply of tangible personal property (other than alcoholic beverages or tobacco products) made by way of sale by a public sector body where
 - (a) the body does not carry on the business of selling such property;
 - (b) all the salespersons are volunteers:
 - (c) the consideration for each item sold does not exceed \$5; and
 - (d) the property is not sold at an event at which supplies of property of the kind or class supplied are made by persons who carry on the business of selling such property. S.C. 1990, c. 45, s. 18.
- 5. A supply made by a public sector body of an admission in respect of a place of amusement at which the principal activity is the placing of bets or the playing of games of chance, where
 - (a) the administrative functions and other functions performed in operating the game and taking the bets are performed exclusively by volunteers; and
 - (b) in the case of a bingo or casino, the game is not conducted in premises or at a place, including any temporary structure, that is used primarily for the purpose of conducting gambling activities. S.C. 1990, c. 45, s. 18.
 - 5.1 A supply made by a charity or non-profit organization (other than a prescribed person)

of a right, other than an admission, to play or participate in a game of chance (other than a prescribed game of chance). S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 166.

- 5.2 A supply of a service that is deemed under section 187 of the Act to have been supplied
- (a) by a charity or non-profit organization (other than a prescribed person); or
- (b) where the service is in respect of a bet made through the agency of a pari-mutuel system on a running, trotting or pacing horse-race. S.C. 1990, c. 45, s. 18.
- 6. A supply made by a public service body of
- (a) a service, where the supply is made in the course of a business of making supplies of the service,
- (b) tangible personal property, other than capital property of the body, made by way of sale, or
- (c) tangible personal property made by way of lease, licence or similar arrangement under an agreement in writing entered into before March 28, 1991,

where the value of the consideration for the supply paid or payable by the recipient is equal to the usual charge by the body for such supplies to such recipients and does not, or could not reasonably be expected to, exceed the direct cost of the supply. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 167.

- **7.** A supply of any service, other than a supply included in section 6, made by a public service body in the course of an event or activity, where the total of all amounts, each of which is the consideration for a supply of such a service made by the body in the course of that event or activity, could not reasonably be expected to exceed the aggregate of all amounts each of which is the direct cost of a supply of such a service made by the body in the course of that event or activity. S.C. 1990, c. 45, s. 18.
- **8.** A supply made by a public sector body of an admission in respect of a film, slide show, or similar presentation where the total of all amounts, each of which is the consideration for an admission in respect of the presentation, could not reasonably be expected to exceed the direct cost of the presentation. S.C. 1990, c. 45, s. 18.
- **9.** A supply made at any time by a public sector body of an admission in respect of a place of amusement where the maximum consideration for a supply at that time by the body of an admission in respect of the place does not exceed one dollar. S.C. 1990, c. 45, s. 18.
- 10. A supply made by a public sector body of any property or service where all or substantially all of the supplies of the property or service by the body are made for no consideration. S.C. 1990, c. 45, s. 18.
- 11. A supply of a right to be a spectator at a performance, athletic event or competitive event, where all or substantially all of the performers, athletes or competitors taking part in the performance or event do not receive, directly or indirectly, remuneration for doing so tother than a reasonable amount as prizes, gifts or compensation for travel or other expenses incidental to the performers', athletes' or competitors' participation in the performance or event, or grants paid by a government or a municipality to the performers, athletes or competitors), and no advertisement or representation in respect of the performance or event features participants who are so remunerated, but does not include a supply of a right to be a spectator at a competitive event in which cash prizes are awarded and in which any competitor is a professional participant in any competitive event. S.C. 1990, c. 45, s. 18.
- 12. A supply made by a public sector body of a membership in, or services supplied as part of, a program established and operated by the body that consists of a series of supervised

instructional classes or activities involving athletics, outdoor recreation, music, dance, arts, crafts or other hobbies or recreational pursuits where

- (a) it may reasonably be expected, given the nature of the classes or activities or the degree of relevant skill or ability required for participation in them, that the program will be provided primarily to children 14 years of age or under, except where the program involves overnight supervision throughout a substantial portion of the program; or
- (b) the program is provided primarily for underprivileged or mentally or physically disabled individuals, S.C. 1990, c. 45, s. 18.
- 13. A supply made by a public sector body of board and lodging or recreational services at a recreational camp or similar place under a program or arrangement for providing the board and lodging or services primarily to underprivileged or mentally or physically disabled individuals. S.C. 1990, c. 45, s. 18.
- **14.** A supply made by a public sector body of food, beverages or short-term accommodation where the supply is made in the course of an activity the purpose of which is to relieve poverty, suffering or distress of individuals and is not fund-raising. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 168.
- 15. A supply made by a public sector body of food or beverages to aged, infirm, disabled or underprivileged individuals under a program established and operated for the purpose of providing prepared food to those individuals in their places of residence and any supply of food or beverages made to the public sector body for the purpose of the program. S.C. 1990, c. 45, s. 18.
 - 16. [Added S.C. 1990, c. 45, s. 18; repealed S.C. 1993, c. 27, s. 169.]
- 17. A supply of a membership in a public sector body (other than a membership in a club the main purpose of which is to provide dining, recreational or sporting facilities) where each member does not receive a benefit by reason of the membership, other than
 - (a) an indirect benefit that is intended to accrue to all members collectively,
 - (b) the right to receive services supplied by the body that are in the nature of investigating, conciliating or settling complaints or disputes involving members,
 - (c) the right to vote at or participate in meetings,
 - (d) the right to receive or acquire property or services supplied to the member for consideration that is not part of the consideration for the membership and that is equal to the fair market value of the property or services at the time the supply is made,
 - (e) the right to receive a discount on the value of the consideration for a supply to be made by the body where the total value of all such discounts to which a member is entitled by reason of the membership is insignificant in relation to the consideration for the membership, or
 - (f) the right to receive periodic newsletters, reports or publications
 - (i) the value of which is insignificant in relation to the consideration for the membership, or
 - (ii) that provide information on the activities of the body or its financial status, other than newsletters, reports or publications the value of which is significant in relation to the consideration for the membership and for which a fee is ordinarily charged by the body to non-members,

except where the body has made an election under this section in prescribed form containing prescribed information. S.C. 1990, c. 45, , s. 18; S.C. 1993, c. 27, s. 170.

- **18.** A supply of a membership made by an organization membership in which is required to maintain a professional status recognized by statute, except where the supplier has made an election under this section in prescribed form containing prescribed information. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 171.
- **19.** A supply made by a public sector body of a right that confers borrowing privileges at a public lending library. S.C. 1990, c. 45, s. 18.
- **20.** The following supplies made by a government or municipality or by a board, commission or other body established by a government or municipality:
 - (a) a supply of a service of registering any property or filing any document in a property registration system,
 - (b) a supply of a service of the filing or procuring of a document in a court.
 - (b.1) a supply of a service of the filing of a document in accordance with legislative requirements,
 - (c) a supply of a licence, permit, quota or similar right (other than such a right supplied in respect of the importation of alcoholic beverages), and the supply of any service in respect of an application for such a right,
 - (d) a supply of a service of providing information in respect of, or of any certificate or other document evidencing, the vital statistics, residency, citizenship or right to vote of any person, the registration of any person for any service provided by the government or any other status of any person,
 - (e) a supply of
 - (i) a service of providing information in respect of, or
 - (ii) any certificate or other document evidencing,

the title to, any right or estate in, or any encumbrance in respect of, property,

- (f) a supply of a service of providing information under the *Privacy Act*, the *Access to Information Act* or any similar provincial legislation,
- (g) a supply of a law enforcement service or a fire protection service made to a government or a municipality or to a board, commission or other body established by a government or municipality,
- (h) a supply of garbage collection service, but not including a supply of a service that is not part of the basic garbage collection service supplied by the government or municipality on a regularly scheduled basis, and
- (i) a supply of a right to deposit refuse at a refuse disposal site,

but not including

- (j) a supply to a consumer of a right to hunt or fish,
- (k) a supply of a right to take or remove forestry products, products that grow in water, fishery products, minerals or peat, where the supply is made to
 - (i) a consumer, or
 - (ii) a person who is not a registrant and who acquires the right in the course of a business of the person of making supplies of the products, minerals or peat to consumers, or
- (l) a supply of a right to enter, to have access to or to use property of the government, municipality or other body. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 172.

- 21. A supply of a municipal service made by or on behalf of a government or municipality to owners or occupants of real property situated in a particular geographic area where the owners or occupants have no option but to receive the service, other than a supply of a service of testing or inspecting any property for the purpose of verifying or certifying that the property meets particular standards of quality or is suitable for consumption, use or supply in a particular manner. S.C. 1990, c. 45, s. 18.
- 22. A supply of a service, made by a municipality or by an organization that operates a water distribution, sewerage or drainage system and that is designated by the Minister to be a municipality for the purposes of this section, of installing, repairing or maintaining a water distribution, sewerage or drainage system that is for the use of all occupants and owners of real property situated in a particular geographic area, other than a supply for which a separate charge is made to the recipient of the supply, of a service of repairing or maintaining a part of the system where the recipient is the owner or occupant of a particular parcel of real property situated in the particular geographic area and the part of the system is for the exclusive use of occupants and owners of the particular parcel. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 173.
- 23. A supply of unbottled water (other than a zero-rated supply and a supply of water dispensed in single servings to consumers through a vending machine or at a permanent establishment of the supplier), including the service of delivering the water, when made by a person other than a government or by a government designated by the Minister to be a municipality for the purposes of this section. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 173.
- **24.** A supply of a municipal transit service or a public passenger transportation service designated by the Minister to be a municipal transit service. S.C. 1990, c. 45, c. 18.
- 25. A supply of real property made by a public service body (other than a financial institution or a government), but not including a supply of
 - (a) a residential complex or an interest therein made by way of sale;
 - (b) real property where the supply is deemed under Part IX of the Act to have been made;
 - (c) real property made by way of sale to an individual or a trust all the beneficiaries of which (other than contingent beneficiaries) are individuals, and all the contingent beneficiaries of which, if any, are individuals or charities, other than a supply of real property on which is situated a structure that was used by the body
 - (i) as an office, or
 - (ii) in the course of commercial activities or of making exempt supplies;
 - (d) real property where, immediately before the time tax would be payable in respect of the supply if it were a taxable supply, the property was used (otherwise than in making the supply) primarily in commercial activities of the body;
 - (e) short-term accommodation made by a non-profit organization, municipality, university, public college or school authority;
 - (f) real property (other than short-term accommodation) made by way of
 - (i) lease, where the term of the lease is less than a month, or
 - (ii) a licence,

where the supply is made in the course of a business carried on by the body;

(g) real property in respect of which an election under section 211 of the Act is in effect at the time tax would become payable under Part IX of the Act in respect of the supply if it were a taxable supply; or

- (h) a parking space made by way of lease, licence or similar arrangement in the course of a business carried on by the body. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 175; S.C. 1994, c. 9, s. 35(c).
- **26.** A supply made by a particular non-profit organization established primarily for the benefit of organized labour where the supply is made to
 - (a) a trade union, association or body referred to in paragraphs 189(a) to (c) of the Act that is a member of or affiliated with the organization, or
 - (b) another non-profit organization established primarily for the benefit of organized labour,

or a supply made by a person referred to in paragraph (a) or (b) to any such organization. S.C. 1990, c. 45, s. 18.

- 27. A supply of a poppy or wreath made by
- (a) the Minister of Veterans Affairs in the course of operating a sheltered employment workshop; or
- (b) the Dominion Command, or any provincial command or branch of the Royal Canadian Legion. S.C. 1990, c. 45, s. 18.
- 28. A supply between
- (a) a municipal body and any of its para-municipal organizations,
- (b) a para-municipal organization of a municipal body and any other para-municipal organization of the municipal body,
- (c) a regional municipality and any of its local municipalities or any para-municipal organization of any of those local municipalities,
- (d) a para-municipal organization of a regional municipality and any local municipality of the regional municipality or any para-municipal organization of the local municipality, or
- (e) a regional municipality or any of its para-municipal organizations and any other organization (other than a government) the designated activities of which include the provision of water or municipal services within an area over which the regional municipality has jurisdiction,

but not including any supply made or received by

- (f) a provincially established designated body,
- (g) a para-municipal organization designated under section 259 of the Act or section 22 or 23, or
- (h) another organization referred to in paragraph (e),

otherwise than in the course of the designated activities of the body or organization, as the case may be, S.C. 1990, c. 45, s. 18.

PART VII

FINANCIAL SERVICES

- 1. A supply of a financial service that is not included in Part IX of Schedule VI. S.C. 1990, c. 45, s. 18.
- **2.** A supply deemed under subsection 150(1) of the Act to be a supply of a financial service, S.C. 1990, c. 45, s. 18.

PART VIII

FERRY, ROAD AND BRIDGE TOLLS

- **1.** A supply, other than a zero-rated supply, of a service of ferrying by watercraft passengers or property where the principal purpose of the ferrying is to transport motor vehicles and passengers between parts of a road or highway system that are separated by a stretch of water. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 177.
- 2. A supply of a right to use a road or bridge where a toll is charged for the right. S.C. 1990, c. 45, s. 18.

SCHEDULE VI ZERO-RATED SUPPLIES

(Subsection 123(1))

PART I

PRESCRIPTION DRUGS AND BIOLOGICALS

- 1. In this Part,
- "pharmacist".—"pharmacist" means a person who is entitled under the laws of a province to practise the profession of pharmacy;
- "practitioner".— "practitioner" means a person who is entitled under the laws of a province to practise the profession of medicine or dentistry;
- "prescription".—"prescription" means a written or verbal order, given to a pharmacist by a practitioner, directing that a stated amount of any drug or mixture of drugs specified in the order be dispensed for the individual named in the order. S.C. 1990, c. 45, s. 18.
 - 2. A supply of any of the following:
 - (a) a drug included in Schedule C or D to the Food and Drugs Act,
 - (b) a drug included in Schedule F to the *Food and Drug Regulations*, other than a drug or mixture of drugs that may, pursuant to the *Food and Drugs Act* or those Regulations, be sold to a consumer without a prescription,
 - (c) a drug or other substance included in Schedule G to the Food and Drugs Act,
 - (d) a drug that contains a substance included in the schedule to the *Narcotic Control Act*, other than a drug or mixture of drugs that may be sold to a consumer without a prescription pursuant to that Act or regulations made under that Act,
 - (e) any of the following drugs, namely,
 - (i) Digoxin,
 - (ii) Digitoxin,
 - (iii) Prenylamine,
 - (iv) Deslanoside,
 - (v) Erythrityl tetranitrate,
 - (vi) Isosorbide dinitrate,

- (vii) Nitroglycerine,
- (viii) Quinidine and its salts,
- (ix) Medical oxygen,
- (x) Epinephrine and its salts, and
- (f) a drug the supply of which is authorized under the Food and Drug Regulations for use in an emergency treatment,

but not including a supply of a drug when it is labelled or supplied for agricultural or veterinary use only. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 179.

- **3.** A supply of a drug when the drug is for human use and is dispensed
- (a) by a practitioner to an individual for the personal consumption or use of the individual or an individual related thereto; or
- (b) on the prescription of a practitioner for the personal consumption or use of the individual named in the prescription. S.C. 1990, c. 45, s. 18.
- **4.** A supply of a service of dispensing a drug where the supply of the drug is included in this Part. S.C. 1990, c. 45, s. 18.
 - **5.** A supply of human sperm. S.C. 1993, c. 27, s. 180.

PART H

MEDICAL DEVICES

- 1. In this Part.
- "cosmetic".—"cosmetic" means a property, whether or not possessing therapeutic or prophylactic properties, commonly or commercially known as a toilet article, preparation or cosmetic that is intended for use or application for toilet purposes or for use in connection with the care of the human body, or any part thereof, whether for cleansing, deodorizing, beautifying, preserving or restoring, and includes a toilet soap, skin cream or lotion, mouth wash, oral rinse, toothpaste, tooth powder, denture cream or adhesive, antiseptic, bleach, depilatory, perfume, scent and any similar toilet article, preparation or cosmetic:
- "practitioner".—"practitioner" means a person who is entitled under the laws of a province to practise the profession of medicine. S.C. 1990, c. 45, s. 18.
- **2.** A supply of a communication device for use with telegraph or telephone apparatus by an individual with a hearing or speech impairment when the device is supplied on the written order of a practitioner. S.C. 1990, c. 45, s. 18.
- **3.** A supply of a heart-monitoring device when the device is supplied to a consumer on the written order of a practitioner for use by an individual with heart disease. S.C. 1990, c. 45, s. 18
- **4.** A supply of a hospital bed when the bed is supplied to a hospital authority or on the written order of a practitioner for use by an incapacitated individual. S.C. 1990, c. 45, s. 18.
- **5.** A supply of an artificial breathing apparatus that is specially designed for use by an individual with a respiratory disorder. S.C. 1990, c. 45, s. 18.
- **5.1** A supply of an aerosol chamber or a metered dose inhaler for use in the treatment of asthma when the supply is made to a consumer on the written order of a practitioner. S.C. 1993. **c.** 27, s. 181.

- A supply of a mechanical percussor for postural drainage treatment. S.C. 1990, c. 45, s. 18.
- 7. A supply of a device that is designed to convert sound to light signals when the device is supplied on the written order of a practitioner for use by an individual with a hearing impairment. S.C. 1990, c. 45, s. 18.
- **8.** A supply of a selector control device that is specially designed for use by a physically disabled individual to enable the individual to select, energize or control household, industrial or office equipment. S.C. 1990, c. 45, s. 18.
- **9.** A supply of eyeglasses or contact lenses when the eyeglasses or lenses are supplied for the treatment or correction of a defect of vision to a consumer on the written order of an eyecare professional who is entitled under the laws of the province in which the professional practises to prescribe eyeglasses or contact lenses for that purpose. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 182.
 - **10.** A supply of an artificial eye. S.C. 1990, c. 45, s. 18.
 - **11.** A supply of artificial teeth. S.C. 1990, c. 45, s. 18.
 - 12. A supply of a hearing aid. S.C. 1990, c. 45, s. 18.
 - 13. A supply of a laryngeal speaking aid. S.C. 1990, c. 45, s. 18.
- 14. A supply of an invalid chair, commode chair, walker, wheelchair lift or similar aid to locomotion, with or without wheels, including motive power and wheel assemblies therefor, that is specially designed for use by a disabled individual. S.C. 1990, c. 45, s. 18.
- **15.** A supply of a patient lifter that is specially designed to move a disabled individual. S.C. 1990, c. 45, s. 18.
- **16.** A supply of a wheelchair ramp that is specially designed for access to a motor vehicle. S.C. 1990, c. 45, s. 18.
 - 17. A supply of a portable wheelchair ramp. S.C. 1990, c. 45, s. 18.
- **18.** A supply of an auxiliary driving control that is designed for attachment to a motor vehicle to facilitate the operation of the vehicle by a physically disabled individual. S.C. 1990. c. 45, s. 18.
- **18.1** A supply of a service of modifying a motor vehicle of an individual to adapt the vehicle for the transportation of an individual using a wheelchair and a supply of property (other than the vehicle) made in conjunction with, and because of, the supply of the service. S.C. 1994, c. 9, s. 29.
- 19. A supply of a patterning device that is specially designed for use by a disabled individual, S.C. 1990, c. 45, s. 18.
- **20.** A supply of a toilet-, bath- or shower-seat that is specially designed for use by a disabled individual. S.C. 1990, c. 45, s. 18.
 - 21. A supply of an insulin infusion pump or an insulin syringe. S.C. 1990, c. 45, s. 18.
- **21.1** A supply of an extremity pump, intermittent pressure pump or similar device for use in the treatment of lymphedema when the supply is made to a consumer on the written order of a practitioner. S.C. 1993, c. 27, s. 183.
- **21.2** A supply of a catheter for sub-cutaneous injections or a lancet when the supply is made to a consumer on the written order of a practitioner. S.C. 1993, c. 27, s. 183.
 - 22. A supply of an artificial limb. S.C. 1990, c. 45, s. 18.

- 23. A supply of a spinal or other orthopaedic brace. S.C. 1990, c. 45, s. 18.
- **23.1** A supply of an orthotic device when the supply is made to a consumer on the written order of a practitioner. S.C. 1993, c. 27, s. 184.
- **24.** A supply of a specially constructed appliance that is made to order for an individual who has a crippled or deformed foot or ankle. S.C. 1990, c. 45, s. 18.
- **25.** A supply of a medical or surgical prosthesis, or an ileostomy, colostomy or urinary appliance or similar article that is designed to be worn by an individual, S.C. 1990, c. 45, s. 18.
- **26.** A supply of an article or material, not including a cosmetic, for use by a user of, and necessary for the proper application and maintenance of, a prosthesis, appliance or similar article described in section 25. S.C. 1990, c. 45, s. 18.
- 27. A supply of a cane or crutch that is designed for use by a physically disabled individual. S.C. 1990, c. 45, s. 18.
 - 28. A supply of a blood-glucose monitor or meter. S.C. 1990, c. 45, s. 18.
- **29.** A supply of blood-sugar testing strips, blood-ketone testing strips, urinary-sugar testing strips, reagents, or tablets, or urinary-ketone testing strips, reagents or tablets. S.C. 1990, c. 45, s. 18; S.C. 1994, c. 9, s. 30.
- **30.** A supply of any article that is specially designed for the use of blind individuals when the article is supplied for use by a blind individual to, by or on the order or certificate of a practitioner, the Canadian National Institute for the Blind or any other bona fide institution or association for the blind. S.C. 1990, c. 45, s. 18.
 - 31. A supply of a prescribed property or service. S.C. 1990, c. 45, s. 18.
- **32.** A supply of a part, accessory or attachment that is specially designed for a property described in this Part. S.C. 1990, c. 45, s. 18.
- 33. A supply of a dog that is or is to be trained as a guide dog for the use of a blind individual, including the service of training the individual to use the dog, where the supply is made to or by an organization that is operated for the purpose of supplying guide dogs to blind individuals. S.C. 1990, c. 45, s. 18.
 - 33.1 A supply of
 - (a) a dog that is or is to be trained to assist an individual with a hearing impairment in respect of problems arising from the impairment, or
 - (b) a service of training the individual to use such a dog,
- where the supply is made to or by an organization that is operated for the purpose of supplying such dogs to individuals with hearing impairments. S.C. 1993, c. 45, s. 18.
- **34.** A supply of a service (other than a service the supply of which is included in any provision of Part II of Schedule V except section 9 of that Part or a service related to the provision of a surgical or dental service that is performed for cosmetic purposes and not for medical or reconstructive purposes) of installing, maintaining, restoring, repairing or modifying a property described in any of sections 2 to 32 of this Part, or any part for such a property where the part is supplied in conjunction with the service. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 186; S.C. 1994, c. 9, s. 31.
- **35.** A supply of a graduated compression stocking, an anti-embolic stocking or similar article when the supply is made to a consumer on the written order of a practitioner S.C. 1993, **c.** 27, **s.** 187.

36. A supply of clothing that is specially designed for use by a disabled individual when the supply is made to a consumer on the written order of a practitioner. S.C. 1993, c. 27, s. 187.

PART III

BASIC GROCERIES

- 1. Supplies of food or beverages for human consumption (including sweetening agents, seasonings and other ingredients to be mixed with or used in the preparation of such food or beverages), other than supplies of
 - (a) wine, spirits, beer, malt liquor or other alcoholic beverages;
 - (b) non-alcoholic malt beverages;
 - (c) carbonated beverages;
 - (d) non-carbonated fruit juice beverages or fruit flavoured beverages, other than milk-based beverages, that contain less than 25% by volume of
 - (i) a natural fruit juice or combination of natural fruit juices, or
 - (ii) a natural fruit juice or combination of natural fruit juices that have been reconstituted into the original state,

or goods that, when added to water, produce a beverage included in this paragraph;

- (e) candies, confectionery that may be classed as candy, or any goods sold as candies, such as candy floss, chewing gum and chocolate, whether naturally or artificially sweetened, and including fruits, seeds, nuts and popcorn when they are coated or treated with candy, chocolate, honey, molasses, sugar, syrup or artificial sweeteners;
- (f) chips, crisps, puffs, curls or sticks (such as potato chips, corn chips, cheese puffs, potato sticks, bacon crisps and cheese curls), other similar snack foods or popcorn and brittle pretzels, but not including any product that is sold primarily as a breakfast cereal;
- (g) salted nuts or salted seeds;
- (h) granola products, but not including any product that is sold primarily as a breakfast cereal;
- (i) snack mixtures that contain cereals, nuts, seeds, dried fruit or any other edible product, but not including any mixture that is sold primarily as a breakfast cereal;
- (j) ice lollies or flavoured, coloured or sweetened ice waters, whether frozen or not;
- (k) ice cream, ice milk, sherbet, frozen yoghurt or frozen pudding, or any product that contains any of those products, when packaged in single servings;
- (1) fruit bars, rolls or drops or similar fruit-based snack foods;
- (m) cakes, muffins, pies, pastries, tarts, cookies, doughnuts, brownies, croissants with sweetening filling or coating, or similar products where
 - (i) they are prepackaged for sale to consumers in quantities of less than six items each of which is a single serving, or
 - (ii) they are not prepackaged for sale to consumers and are sold as single servings in quantities of less than six,

but not including bread products, such as bagels, English muffins, croissants or bread rolls, without sweetening filling or coating;

(n) beverages (other than unflavoured milk) or pudding, including flavoured gelatine,

mousse, flavoured whipped dessert product or any other products similar to pudding, except

- (i) when prepared and prepackaged specially for consumption by babies,
- (ii) when sold in multiples, prepackaged by the manufacturer or producer, of single servings, or
- (iii) when the cans, bottles or other primary containers in which the beverages or products are sold contain a quantity exceeding a single serving;
- (o) the following prepared foods and beverages sold in a form suitable for immediate consumption, either where sold or elsewhere, namely,
 - (i) food or beverages heated for consumption,
 - (ii) prepared salads,
 - (iii) sandwiches and similar products,
 - (iv) platters of cheese, cold cuts, fruit or vegetables and other arrangements of prepared food,
 - (v) ice cream, ice milk, sherbet, frozen yoghurt, frozen pudding or a product containing any of those products when sold in single servings and dispensed at the place where it is sold, and
 - (vi) beverages dispensed at the place where they are sold;
- (p) food or beverages sold through a vending machine,
- (q) food or beverages when sold at an establishment at which all or substantially all of the sales of food or beverages are sales of food or beverages included in any of paragraphs (a) to (p) except where
 - (i) the food or beverage is sold in a form not suitable for immediate consumption, having regard to the nature of the product, the quantity sold or its packaging, or
 - (ii) in the case of a product described in paragraph (m),
 - (A) the product is prepackaged for sale to consumers in quantities of more than five items each of which is a single serving, or
 - (B) the product is not prepackaged for sale to consumers and is sold as single servings in quantities of more than five,

and is not sold for consumption at the establishment, and

- (r) unbottled water, other than ice. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 188.
- **2.** A supply of unbottled water for human consumption made to a consumer, when the water is dispensed to the consumer in a quantity exceeding a single serving through a vending machine or at a permanent establishment of the supplier. S.C. 1993, c. 27, s. 189.

PART IV

AGRICULTURE AND FISHING

- 1. A supply of farm livestock (other than rabbits), poultry or bees that are ordinarily raised or kept to produce, or to be used as, food for human consumption or to produce wool. S.C. 1990, c. 45, s. 18; S.C. 1994, c. 9, s. 32.
 - 1.1 A supply of a rabbit made by a person otherwise than in the course of a business in the

course of which the person regularly supplies animals as pets to consumers. S.C. 1994, c. 9, s. 32.

- 2. A supply of grains or seeds in their natural state or treated for seeding purposes, hay, silage or other fodder crops, that are ordinarily used as or to produce food for human consumption or feed for farm livestock or poultry, when supplied in a quantity that is larger than the quantity that is ordinarily sold or offered for sale to consumers, but not including grains, seeds or grain or seed mixtures that are packaged, prepared or sold for use as feed for wild birds or as pet food. S.C. 1990, c. 45, s. 18.
- **2.1** A supply of feed, made by the operator of a feedlot, that is deemed to be a separate supply under paragraph 164.1(2)(a) of the Act. S.C. 1993, c. 27, s. 190.
- 3. A supply of hops, barley, flax seed, straw, sugar cane or sugar beets. S.C. 1990, c. 45, s. 18.
- **4.** A supply of poultry or fish eggs that are produced for hatching purposes. S.C. 1990, c. 45, s. 18.
 - 5. A supply of fertilizer made at any time to a recipient when the fertilizer is supplied
 - (a) in bulk, or
 - (b) in a container that contains at least 25 kg of fertilizer,

where the total quantity of fertilizer supplied at that time to the recipient is at least 500 kg. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 191.

- 6. A supply of wool, not further processed than washed. S.C. 1990, c. 45, s. 18.
- 7. A supply of tobacco leaves, not further processed than dried and sorted. S.C. 1990, c. 45, s. 18.
- **8.** A supply of fish or other marine or freshwater animals not further processed than frozen, salted, smoked, dried, scaled, eviscerated or filleted, other than any such animal that is
 - (a) not ordinarily used as food for human consumption; or
 - (b) sold as bait in recreational fishing. S.C. 1990, c. 45, s. 18.
- **9.** A supply made to a registrant of farmland by way of lease, licence or similar arrangement, to the extent that the consideration for the supply is a share of the production from the farmland of property the supply of which is a zero-rated supply. S.C. 1990, c. 45, s. 18.
 - 10. A supply of prescribed property. S.C. 1990, c. 45, s. 18.

PART V

EXPORTS

- 1. A supply of tangible personal property (other than an excisable good) made by a person to a recipient (other than a consumer) who intends to export the property where
 - (a) the recipient exports the property as soon after the property is delivered by the person to the recipient as is reasonable having regard to the circumstances surrounding the exportation and, where applicable, to the normal business practice of the recipient;
 - (b) the property is not acquired by the recipient for consumption, use or supply in Canada before the exportation of the property by the recipient;
 - (c) after the supply is made and before the recipient exports the property, the property is

- not further processed, transformed or altered in Canada except to the extent reasonably necessary or incidental to its transportation; and
- (d) the person maintains evidence satisfactory to the Minister of the exportation of the property by the recipient or, where the recipient is authorized under subsection 221.1(2) of the Act, the recipient provides the person with a certificate in which the recipient certifies that the property will be exported in the circumstances described in paragraphs (a) to (c).
- (e) [Repealed] S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 192.
- **2.** A supply of property or a service (other than a supply of real property by way of sale) made to a non-resident person who is not registered under Subdivision d of Division V of Part IX of the Act at the time the supply is made, where the property or service is acquired by the person for consumption, use or supply
 - (a) where the person carries on the business of transporting passengers or property to or from Canada by ship, aircraft or railway, in the course of so transporting passengers or property;
 - (b) in the course of operating a ship or aircraft by or on behalf of a government of a country other than Canada; or
 - (c) in the course of operating a ship for the purpose of obtaining scientific data outside Canada or for the laying or repairing of oceanic telegraph cables. S.C. 1990, c. 45, s. 18.
- **2.1** A supply of fuel made to a person who is registered under Subdivision d of Division V of Part IX of the Act at the time the supply is made, where
 - (a) the person carries on the business of transporting passengers or property to or from Canada by ship, aircraft or railway; and
 - (b) the fuel is acquired by the person for use in the course of so transporting passengers or property. S.C. 1993, c. 27, s. 193.
- **3.** A supply of an excisable good where the recipient exports the good in bond. S.C. 1990, c. 45, s. 18.
- **4.** A supply of a service (other than a transportation service) in respect of tangible personal property that is ordinarily situated outside Canada, that is temporarily imported for the sole purpose of having the service performed and that is exported as soon as is practicable after the service is performed. S.C. 1990, c. 45, s. 18.
- **5.** A supply made to a non-resident person of a service of acting as an agent of that person, to the extent that the service is in respect of
 - (a) a supply to that person that is included in any other section of this Part; or
 - (b) a supply made outside Canada by or to that person, S.C. 1990, c. 45, s. 18.
- **6.** A supply made by a person to a non-resident recipient of an emergency repair service, and of any property supplied in conjunction with such a service, in respect of a conveyance or cargo container that is being used by the person in a business of transporting passengers or goods. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 194.
- 7. A supply of a service made to a non-resident person, other than an individual, or to a non-resident individual who is outside Canada at all times when the individual has contact with the supplier in relation to the supply, but not including a supply of
 - (a) a service that is primarily for consumption, use or enjoyment in Canada;
 - (b) an advisory, consulting or professional service;
 - (c) a postal service;

- (d) a service in respect of real property situated in Canada;
- (e) a service in respect of tangible personal property that is situated in Canada at the time the service is performed;
- (f) a service of acting as an agent of the non-resident person or individual; or
- (g) a transportation service. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 195.
- **8.** A supply of a service of advertising made to a non-resident person who is not registered under Subdivision d of Division V of Part IX of the Act at the time the service is performed. S.C. 1990, c. 45, s. 18.
- **9.** A supply made to a non-resident person of an advisory, consulting or research service that is intended to assist the person in taking up residence or establishing a business venture in Canada. S.C. 1990, c. 45, s. 18.
- 10. A supply of an invention, patent, trade secret, trade-mark, trade-name, copyright, industrial design or other intellectual property or any right, licence, or privilege to use any such property, where the recipient is a non-resident person who is not registered under Subdivision d of Division V of Part IX of the Act at the time the supply is made. S.C. 1990, c. 45, s. 18.
- 11. A supply of tangible personal property made by a person operating a duty free shop licensed as such under the *Customs Act* to an individual at a duty free shop for export by the individual. S.C. 1990, c. 45, s. 18.
- 12. A supply of tangible personal property made by a person to a recipient where the person delivers the property to a common carrier, or mails the property, for export and delivery to the recipient at a place outside Canada. S.C. 1990, c. 45, s. 18.
- 13. A supply made to a non-resident person who is not registered under Subdivision d of Division V of Part IX of the Act of
 - (a) tangible personal property, or a service performed in respect of tangible personal property, where the property or service is acquired by the person for the purpose of fulfilling an obligation of the person under a warranty; or
 - (b) tangible personal property, where the supply is deemed under section 179 of the Act to have been made as a consequence of a transfer of possession of the property in the performance of an obligation of the person under a warranty. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 196.
 - 14. (1) In this section,
- "die".—"die" means a solid or hollow form used for shaping materials by stamping, pressing, extruding, drawing or threading;
- "fixture".—"fixture" means a device for holding goods in process while working tools are in operation that does not contain any special arrangement for guiding the working tools;
- "jig".—"jig" means a device used in the accurate machining of goods in process by holding the goods firmly and guiding tools exactly to position;
- "mould".—"mould" means a hollow form, matrix or cavity into which materials are placed to produce goods of desired shapes;
- "tool".—"tool" means a device for use in, or attachment to, production machinery that is for the assembling of materials or the working of materials by turning, milling, grinding, polishing, drilling, punching, boring, shaping, shearing, pressing or planing.
- (2) A supply of property that is a jig, die, mould, tool or fixture, or an interest therein, made to a non-resident person who is not registered under Subdivision d of Division V of

Part IX of the Act at the time the supply is made, where the property is to be used directly in the manufacture or production of tangible personal property for the non-resident person. S.C. 1993, c. 27, s. 196.

- 15. A supply of natural gas made by a person to a recipient who intends to export the gas by pipeline where
 - (a) the recipient exports the gas as soon after it is delivered by the person to the recipient as is reasonable having regard to the circumstances surrounding the exportation and, where applicable, to the normal business practice of the recipient;
 - (b) the gas is not acquired by the recipient for consumption, use or supply in Canada, except to the extent that it is used by a carrier as fuel or compressor gas to transport the gas by pipeline, before the exportation of the gas by the recipient;
 - (c) after the supply is made and before the recipient exports the gas, the gas is not further processed, transformed or altered in Canada except to the extent reasonably necessary or incidental to its transportation; and
 - (d) the person maintains evidence satisfactory to the Minister of the exportation of the gas by the recipient. S.C. 1993, c. 27, s. 196.
- **16.** A supply of tangible personal property made by way of sale to a person operating a duty free shop licensed as such under the *Customs Act* where the person acquires the property as inventory for supply by way of sale at the shop to an individual for export by the individual and the person provides the supplier with the licence number of the shop. S.C. 1993, c. 27, s. 196.
- 17. A supply made to a non-resident person of a custodial or nominee service in respect of securities of the person. S.C. 1993, c. 27, s. 196.
- 18. A supply made to a non-resident person, other than an individual, who is not registered under Subdivision d of Division V of Part IX of the Act of a service of instructing non-resident individuals in, or administering examinations in respect of, courses leading to certificates, diplomas, licences or similar documents, or classes or ratings in respect of licences, that attest to the competence of the individuals to whom the service is rendered or the examination is administered to practise or perform a trade or vocation. S.C. 1993, c. 27, s. 196.
- 19. A supply made to a non-resident person who is not registered under Subdivision d of Division V of Part IX of the Act of a service of destroying or discarding tangible personal property. S.C. 1993, c. 27, s. 196.
- **20.** A supply made to a non-resident person who is not registered under Subdivision d of Division V of Part IX of the Act of a service of dismantling property for the purpose of exporting the property. S.C. 1993, c. 27, s. 196.
- **21.** A supply made to a non-resident person who is not registered under Subdivision d of Division V of Part IX of the Act of a service of testing or inspecting tangible personal property that is imported or acquired in Canada for the sole purpose of having the service performed and that is to be destroyed or discarded in the course of providing, or on completion of, the service. **S.C.** 1993, c. 27, s. 196.
- 22. A supply of a service in respect of a telecommunication or postal service where the supply is made, by a registrant who carries on the business of supplying telecommunication or postal services, to a non-resident person who is not a registrant and who carries on such a business, S.C. 1993, c. 27, s. 196.

EXCISE TAX ACT

- 23. A supply of an advisory, professional or consulting service made to a non-resident person, but not including a supply of
 - (a) a service rendered to an individual in connection with criminal, civil or administrative litigation in Canada, other than a service rendered before the commencement of such litigation;
 - (b) a service in respect of real property situated in Canada;
 - (c) a service in respect of tangible personal property that is situated in Canada at the time the service is performed; or
 - (d) a service of acting as an agent of the person.
 - 24. For the purposes of this Part,
 - (a) a floating home, and
 - (b) a mobile home that is not affixed to land

shall each be deemed to be tangible personal property and not real property. S.C. 1993, c. 27, s. 196.

PART VI

TRAVEL SERVICES

1. A supply of the part of a tour package that is not the taxable portion of the package. S.C. 1990, c. 45, s. 18.

PART VII

TRANSPORTATION SERVICES

- 1. (1) In this Part,
- "carrier".--[Repealed]
- "continuous freight movement".—"continuous freight movement" means the transportation of tangible personal property by one or more carriers to a destination specified by the shipper of the property, where all freight transportation services supplied by the carriers are supplied as a consequence of instructions given by the shipper of the property;
- "continuous journey".—"continuous journey" of an individual or a group of individuals means the set of all passenger transportation services provided to the individual or group
 - (a) and for which a single ticket or voucher in respect of all the services is issued, or
 - (b) where 2 or more tickets or vouchers are issued in respect of 2 or more legs of a single journey of the individual or group on which there is no stopover between any of the legs of the journey for which separate tickets or vouchers are issued, and all the tickets or vouchers are issued by the same supplier or by 2 or more suppliers through one agent acting on behalf of all the suppliers where
 - (i) all such tickets are supplied at the same time and evidence satisfactory to the Minister is maintained by the supplier or agent that there is no stopover between any of the legs of the journey for which separate tickets or vouchers are issued, or
 - (ii) the tickets or vouchers are issued at different times and evidence satisfactory to the Minister is submitted by the supplier or agent that there is no stopover between any of the legs of the journey for which separate tickets or vouchers are issued;

- "continuous outbound freight movement".—"continuous outbound freight movement" means the transportation of tangible personal property by one or more carriers from a place in Canada
 - (a) to a place outside Canada, or
 - (b) to another place in Canada from which the property is to be exported.
- where, after the shipper of the property transfers possession of the property to a carrier and before the property is exported, it is not further processed, transformed or altered in Canada, except to the extent that is reasonably necessary for its transportation;
- "destination".—"destination", in respect of a continuous freight movement of property, means a place specified by the shipper of the property where possession of the property is transferred to the person to whom the property is consigned or addressed by the shipper:
- "freight transportation service".—"freight transportation service" means a particular service of transporting tangible personal property and, for greater certainty, includes
 - (a) a service of delivering mail, and
 - (b) any other property or service supplied to the recipient of the particular service by the person who supplies the particular service, where the other property or service is part of or incidental to the particular service, whether there is a separate charge for the other property or service,
- but does not include a service provided by the supplier of a passenger transportation service of transporting an individual's baggage in connection with the passenger transportation service;
- "international flight".—"international flight" means any flight of an aircraft, other than a flight originating and terminating in Canada, that is operated by a person in the course of a business of supplying passenger air transportation services;
- "origin". -- "origin" means
 - (a) in respect of a continuous freight movement, the place where the first carrier that engaged in the continuous freight movement takes possession of the property being transported, and
 - (b) in respect of a continuous journey, the place where the passenger transportation service that is included in the continuous journey and that is first provided begins;
- "place outside Canada".—"place outside Canada", in respect of a freight transportation service, includes at a particular time a place in Canada if, at that time, the property being transported has been imported but has not been released and the property is being transported in compliance with the *Customs Act* or any other Act of Parliament that prohibits, controls or regulates the importation of goods;
- "shipper".—"shipper" of tangible personal property means the person who, in respect of a continuous freight movement or a continuous outbound freight movement, transfers possession of the property being shipped to a carrier at the origin of the freight movement and, for greater certainty, does not include a person who is a carrier of the property to which the freight movement relates;
- "stopover". "stopover", in respect of a continuous journey of an individual or a group of individuals, means any place at which the individual or group embarks or disembarks a conveyance used in the provision of a passenger transportation service included in the continuous journey, for any reason other than transferring to another conveyance or to allow for servicing or refuelling of the conveyance;

- "taxation area".—"taxation area" means Canada, the United States (except Hawaii) and the islands of St. Pierre and Miquelon;
- "termination".—"termination" of a continuous journey means the place where the passenger transportation service that is included in the continuous journey and that is last provided ends.
- (2) For the purposes of this Part, where in respect of a continuous freight movement several carriers supply freight transportation services in the course of the continuous freight movement, and the shipper or the consignee of the property is, under the contract of carriage for the continuous freight movement, required to pay a particular carrier that is one of those carriers a particular amount that is part of all of the consideration for the freight transportation services supplied by those several carriers,
 - (a) the particular carrier shall be deemed to have made a supply of a freight transportation service to the shipper or consignee, as the case may be, for consideration equal to the particular amount, whether the particular amount includes an amount paid to the particular carrier as agent of any of the other several carriers;
 - (b) the shipper or consignee, as the case may be, shall be deemed to have received a supply of a freight transportation service from the particular carrier for consideration equal to the particular amount and not to have received a freight transportation service from any of the other several carriers; and
 - (c) to the extent that any part of the particular amount is paid by one of the several carriers (in this paragraph referred to as the "first carrier") to another of the several carriers, the first carrier shall be deemed to be the recipient of freight transportation services supplied by the other carriers in relation to the continuous freight movement and, to the same extent, the other carriers shall be deemed to have supplied those freight transportation services to the first carrier and not to the shipper or consignee. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 197.
- **2.** A supply of a passenger transportation service that is provided to an individual or a group of individuals and that is part of a continuous journey of the individual or group, other than a continuous journey that includes transportation by air, where
 - (a) the origin or termination of the continuous journey is outside Canada, or
 - (b) there is a stopover outside Canada,

but not including a passenger transportation service that is part of a continuous journey if both the origin and the termination of the journey are in Canada and, at the time the journey begins, the individual or group is not scheduled to be outside Canada for an uninterrupted period of a[t] least 24 hours during the course of the journey. S.C. 1990, c. 45, s. 18.

- 3. A supply of a passenger transportation service that is provided to an individual or a group of individuals and that is part of a continuous journey of the individual or group that includes transportation by air, where
 - (a) the origin or termination of the continuous journey, or any stopover in respect thereof, is outside the taxation area;
 - (b) the origin and termination of the continuous journey, and all stopovers in respect thereof, are outside Canada:
 - (c) the origin of the continuous journey is within the taxation area, but outside Canada, and the recipient of the supply tenders the consideration for the supply at a place outside Canada; or

- (d) all places at which the individual or group embarks or disembarks an aircraft are outside Canada and the origin or termination of the continuous journey, or any stopover in respect thereof, is outside Canada. S.C. 1990, c. 45, s. 18.
- **4.** A supply of a service of transporting an individual's baggage in connection with a passenger transportation service that is included in section 2 or 3 for consideration that is not included as part of the consideration for the passenger transportation service, where the supply is made by the supplier of the passenger transportation service, S.C. 1990, c. 45, s. 18.
- **5.** A supply of tangible personal property or a service made by a person, in the course of a business of making supplies of passenger transportation services, to an individual aboard an aircraft on an international flight, where the property is delivered, or the service is wholly provided, aboard the aircraft. S.C. 1990, c. 45, s. 18.
- **6.** A supply of a freight transportation service in respect of the transportation of tangible personal property from a place in Canada to a place outside Canada where the value of the consideration for the supply is \$5 or more. S.C. 1990, c. 45, s. 18.
- **7.** A supply made by a carrier of a freight transportation service in respect of the transportation of tangible personal property from a place in Canada to another place in Canada, where
 - (a) the shipper of the property provides the carrier with a declaration in prescribed form that the property is being shipped for export and that the freight transportation service to be supplied by the carrier is part of a continuous outbound freight movement in respect of the property;
 - (b) the property is exported and the service is part of a continuous outbound freight movement in respect of the property; and
 - (c) the value of the consideration for the supply is \$5 or more, S.C. 1990, c. 45, s. 18.
- **8.** A supply of a freight transportation service in respect of the transportation of tangible personal property from a place outside Canada to a place in Canada. S.C. 1990, c. 45, s. 18.
- **9.** A supply of a freight transportation service in respect of the transportation of tangible personal property from a place outside Canada to another place outside Canada. S.C. 1990, c. 45, s. 18.
- 10. A supply of a particular freight transportation service from a place in Canada to another place in Canada that is part of a continuous freight movement from an origin outside Canada to a destination in Canada, where the supplier of the service maintains documentary evidence satisfactory to the Minister that the service is part of a continuous freight movement from an origin outside Canada to a destination in Canada, S.C. 1990, c. 45, s. 18.
- 11. A supply of a freight transportation service made by a carrier of the property being transported to a second carrier of the property being transported, where the service is part of a continuous freight movement and the second carrier is neither the shipper nor the consignee of the property being transported. S.C. 1990, c. 45, s. 18.
- 12. A supply of a service of acting as an agent for a non resident person who is not registered under Subdivision d of Division V of Part IX of the Act at the time the supply is made, to the extent that the service is in respect of a supply to that person of a freight transportation service that is included in section 6, 7, 8, 9 or 10, S.C. 1990, c. 45, s. 18.
- 13. A supply by a licensee under paragraph 24(1)(a) of the Customs 4ct of a service of warehousing imported goods at a sufferance warehouse operated by the licensee, where the

purpose of the service is to enable examination of the goods before their release. S.C. 1993, c. 27, s. 198.

14. A supply of a service of ferrying by watercraft passengers or property to or from a place outside Canada, where the principal purpose of the ferrying is to transport motor vehicles and passengers between parts of a road or highway system that are separated by a stretch of water. S.C. 1993, c. 27, s. 198.

PART VIII

INTERNATIONAL ORGANIZATIONS AND OFFICIALS

- 1. A supply of property or a service that is for the use of the Governor General. S.C. 1990, c. 45, s. 18.
- **2.** A supply of property or a service to an international bridge or tunnel authority for use in the construction of a bridge or tunnel that crosses the boundary between Canada and the United States. S.C. 1990, c. 45, s. 18.

PART IX

FINANCIAL SERVICES

- **1.** A supply of a financial service (other than a supply that is included in section 2) made by a financial institution to a non-resident person, except where the service relates to
 - (a) a debt that arises from
 - (i) the deposit of funds in Canada, where the instrument issued as evidence of the deposit is a negotiable instrument, or
 - (ii) the lending of money that is primarily for use in Canada;
 - (b) a debt for all or part of the consideration for a supply of real property that is situated in Canada:
 - (c) a debt for all or part of the consideration for a supply of personal property that is for use primarily in Canada;
 - (d) a debt for all or part of the consideration for a supply of a service that is to be performed primarily in Canada; or
 - (e) a financial instrument (other than an insurance policy or a precious metal) acquired, otherwise than directly from a non-resident issuer, by the financial institution acting as a principal. S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 199.
- **2.** A supply made by a financial institution of a financial service that relates to an insurance policy issued by the institution (other than a service that relates to investments made by the institution), to the extent that
 - (a) where the policy is a life or accident and sickness insurance policy (other than a group policy), it is issued in respect of an individual who at the time the policy becomes effective, is a non-resident individual;
 - (b) where the policy is a group life or accident and sickness insurance policy, it relates to non-resident individuals who are insured under the policy;
 - (c) where the policy is a policy in respect of real property, it relates to property situated outside Canada; and

- (d) where the policy is a policy of any other kind, it relates to risks that are ordinarily situated outside Canada. S.C. 1990, c. 45, s. 18.
- **3.** A supply of a financial service that is the supply of precious metals where the supply is made by the refiner thereof or by the person on whose behalf the precious metals were refined. **S.C.** 1990, c. 45, s. 18.

PART X

COLLECTION OF CUSTOMS DUTIES

1. A supply made by Canada Post Corporation of a service under an agreement made with the Minister under subsection 147.1(3) of the *Customs Act*. S.C. 1992, c. 28, s. 41(1).

SCHEDULE VII Non-Taxable Importations

(Sections 213 and 217)

- **1.** Goods that are classified under heading No. 98.01, 98.02, 98.03, 98.04, 98.05, 98.06, 98.07, 98.10, 98.11, 98.12, 98.15, 98.16 or 98.19 or subheading No. 9823.60, 9823.70, 9823.80 or 9823.90 of Schedule I to the *Customs Tariff*, to the extent that the goods are not subject to duty under that Act, but not including goods that are classified under tariff item 9804.30.00 of that Schedule, S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 200.
- **2.** Medals, trophies and other prizes, not including usual merchantable goods, that are won outside Canada in competitions, that are bestowed, received or accepted outside Canada or that are donated by persons outside Canada, for heroic deeds, valour or distinction. S.C. 1990, c. 45, c. 18.
- **3.** Printed matter that is to be made available to the general public, without charge, for the promotion of tourism, where the printed matter is
 - (a) imported by or on the order of a foreign government or an agency or representative of a foreign government; or
 - (b) imported by a board of trade, chamber of commerce, municipal or automobile association or similar organization to which it was supplied for no consideration, other than shipping and handling charges, S.C. 1990, c. 45, c. 18.
- **4.** Goods that are imported by a charity in Canada and that have been donated to the charity, S.C. 1990, c. 45, c. 18.
- **5.** Goods that are imported by a particular person where the goods are supplied to the particular person by a non-resident person for no consideration, other than shipping and handling charges, as replacement parts under a warranty in respect of tangible personal property. S.C. 1990, c. 45, c. 18.
- **6.** Goods the supply of which is included in any of Parts I to IV and VIII of Schedule VI. **S.C.** 1990, c. 45, s. 18; **S.C.** 1994, c. 9, s. 34.
- 7. Goods (other than prescribed goods) that are sent to the recipient of the supply of the goods at an address in Canada by mail or courier (within the meaning assigned by subsection

- 2(1) of the *Customs Act*) and the value of which, determined under paragraph 215(1)(a) of the Act, is not more than \$20. S.C. 1990, c. 45, s. 18; S.C. 1992, c. 28, s. 42(1).
- 7.1 Goods that are prescribed property for the purposes of section 143.1 of the Act and that are sent, by mail or courier, to the recipient of the supply of the goods at an address in Canada, where the supplier is registered under Subdivision d of Division V of Part IX of the Act at the time the goods are imported. S.C. 1993, c. 27, s. 201.
- **8.** Prescribed goods imported in prescribed circumstances and under prescribed terms and conditions, S.C. 1990, c. 45, s. 18; S.C. 1993, c. 27, s. 202.
- **9.** Containers that, because of regulations made under Note 11(c) to Chapter 98 of Schedule I to the *Customs Tariff*, may be imported free of customs duties. S.C. 1993, c. 27, s. 202.
- 10. Money or certificates or other documents evidencing a right that is a financial instrument. S.C. 1993, c. 27, s. 202.

EXPORT ACT

1.	Short title	767
2.	Export duties on certain logs and pulpwood	767
3.	Export duties on certain ores	767
4.	When duties chargeable	767
5.	Prohibiting export	767
6.	Restrictions on the movement of intoxicating liquors	767

SCHEDULE (SECTION 2)



EXPORT ACT

R.S.C. 1985, c. E-18, as am. R.S.C. 1985 (2nd Supp.), c. 1, s. 213(3).

- 1. Short title.—This Act may be cited as the Export Act.
- 2. (1) Export duties on certain logs and pulpwood.—If any country imposes a duty on any of the articles enumerated in the schedule when imported into that country from Canada, the Governor in Council may be proclamation declare an export duty chargeable on pine. Douglas fir, spruce, fir balsam, cedar and hemlock logs and pulpwood exported from Canada to that country.
- (2) **Idem.**—The export duty declared under subsection (1) shall not exceed three dollars per thousand feet, board measure, but in case of the export of logs or pulpwood in shorter lengths than nine feet, a rate per cord may be levied in the same manner not greater than the equivalent of the rate of three dollars per thousand feet, board measure.
- **3. Export duties on certain ores.**—The Governor in Council may by proclamation impose the following export duties on the following ores and metals:
 - (a) on nickel contained in matte, in the ore or in any crude or partially manufactured state, when exported from Canada, an export duty not exceeding ten cents per pound:
 - (b) on copper contained in any matte or ore that also contains nickel, when exported from Canada, an export duty not exceeding two cents per pound;
 - (c) on ores that contain copper or any metal other than nickel or lead, when exported from Canada, an export duty not exceeding fifteen per cent of the value of the ores; and
 - (d) on lead ores, and on lead and silver ores, when exported from Canada to a country that imposes an import duty on lead in bars, or in the form of pig lead, in excess of the import duty on lead contained in lead ores, or in lead and silver ores, an export duty on the lead contained in the ores so exported from Canada to an amount per pound equivalent to the excess.
- **4.** (1) **When duties chargeable.**—The export duties provided for by this Act are chargeable after the publication of the proclamation by which they are declared chargeable or imposed.
- (2) **Duties may be removed and reimposed.**—The Governor in Council may be proclamation remove and reimpose any export duty.
- **5.** (1) **Prohibiting export.**—The Governor in Council may by regulation prohibit the exportation from Canada of
 - (a) petroleum in its crude or partly manufactured state; and
 - (b) pulpwood of the variety, kind, place of origin or having the particulars of identification or ownership or production described in the regulation.
- (2) Laid before Parliament.—Every regulation made pursuant to subsection (1) shall be laid before both Houses of Parliament within the first fifteen days of the session next after the late thereof, and the regulation shall remain in force until the day immediately succeeding the late of prorogation of that session of Parliament and no longer unless during the session it is approved by resolution of both Houses of Parliament.
- 6. (1) Restrictions on the movement of intoxicating liquors. Notwithstanding any other statute or law, any regulation made thereunder or any bond, agreement or other instrument relating thereto.

- (a) no intoxicating liquor held in bond or otherwise under the control of officials of the Government of Canada under the *Excise Act*, the *Customs Act*, or any other statute of Canada shall be released or removed from any bonding warehouse, distillery, brewery or other building or place in which the liquor is stored in any case in which the liquor proposed to be removed is destined for delivery in any country into which the importation of the liquor is prohibited by law;
- (b) it is unlawful to grant a clearance to any vessel having on board any intoxicating liquor destined for delivery in any country into which the importation of the liquor is prohibited by law; and
- (c) it is unlawful to make any entry for exportation of any intoxicating liquor destined for delivery in any country into which the importation of the liquor is prohibited by law.
- (2) **Definition of intoxicating liquor.**—In this section, "intoxicating liquor" includes every spirituous or malt liquor, and every wine, and any and every combination of liquors or drinks that is intoxicating, and any mixed liquor capable of being used as a beverage, and part of which is spirituous or otherwise intoxicating.
- (3) The Governor in Council may make such orders and regulations as he may consider necessary for giving effect to any of the provisions of this section. R.S.C., 1985, c. 1 (2nd Supp.), s. 213(3).

SCHEDULE

(Section 2)

Timber or lumber or wood, namely: lumber and timber planks and boards of amaranth, cocoboral, boxwood, cherry, chestnut, walnut, gumwood, mahogany, pitch pine, rosewood, sandalwood, sycamore, spanish cedar, oak, hickory, whitewood, African teak, black-heart ebony, lignum vitae, red cedar, redwood, satinwood and white ash, when not otherwise manufactured than roughsawn or split or creosoted, vulcanized or treated by any other preserving process; sawed or split boards, planks, deals and other lumber when not further manufactured than dressed on one side only or creosoted, vulcanized or treated by any preserving process; pine and spruce clapboards; timber or lumber hewn or sawed, squared or sided or creosoted; laths, pickets and palings; staves not listed or jointed of wood of all kinds; firewood, handle, heading, stave, and shingle bolts, hop poles, fence posts, railroad ties; hubs for wheels, posts, last blocks, wagon, oar, gun, heading and all like blocks or sticks rough hewn, or sawed only; felloes of hickory wood, rough sawn to shape only, or rough sawn and bent to shape, not planed, smoothed or otherwise manufactured; hickory billets and hickory lumber, sawn to shape for spokes of wheels, but not further manufactured; hickory spokes, rough turned, not tenoned mitred, throated, faced, sized, cut to length, round tenoned or polished; shingles of wood; the wood of the persimmon and dogwood trees; and logs and round unmanufactured timber, ship timber or ship planking, not specially enumerated or provided for in the Customs Tariff.

EXPORT AND IMPORT PERMITS ACT

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R.S.C. 1985, c. E-19, as am. R.S.C. 1985 (2nd Supp.), c. 1,s. 213(1) and (4); R.S.C. 1985 (3rd Supp.), c. 12, s. 26; R.S.C. 1985 (3rd Supp.), c. 13; R.S.C. 1985 (3rd Supp.), c. 41, s. 127; R.S.C. 1985 (4th Supp.), c. 47, s. 52; S.C. 1988, c. 65, ss. 116 to 123; S.C. 1991, c. 28, ss. 1 to 5; S.C. 1993, c. 34, s. 67; S.C. 1993, c. 44, ss. 146 to 154.

SHORT TITLE

1. Short title.—This Act may be cited as the Export and Import Permits Act.

INTERPRETATION

- 2. Definitions.—In this Act,
- "Area Control List".—"Area Control List" means a list of countries established under section 4:
- "Automatic Firearms Country Control List".—"Automatic Firearms Country Control List" means a list of countries established under section 4.1;
- "Export Control List".—"Export Control List" means a list of goods established under section 3;
- "Free Trade Agreement".—"Free Trade Agreement" has the meaning given to the term "Agreement" by the Canada-United States Free Trade Agreement Implementation Act:
- "goods imported from a NAFTA country".—"goods imported from a NAFTA country" means goods that are shipped directly to Canada from a NAFTA country within the meaning of sections 17 and 18 of the *Customs Tariff*;
- "Import Control List".—"Import Control List" means a list of goods established under section 5;
- "Minister".—"Minister" means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council as the Minister for the purposes of this Act;
- "NAFTA".—"NAFTA" has the meaning assigned to the word "Agreement" by subsection 2(1) of the North American Free Trade Agreement Implementation Act:
- "NAFTA country".—"NAFTA country" has the meaning assigned to the expression "NAFTA country" by subsection 2(1) of the North American Free Trade Agreement Implementation Act;
- "resident of Canada".—"resident of Canada" means, in the case of a natural person, a person who ordinarily resides in Canada and, in the case of a corporation, a corporation having its head office in Canada or operating a branch office in Canada. S.C. 1988, c. 65, s. 116; S.C. 1991, c. 28, s. 1; S.C. 1993, c. 44, s. 146.

ESTABLISHMENT OF CONTROL LISTS

- 3. Export Control List of Goods. —The Governor in Council may establish a list of goods, to be called an Export Control List, including therein any article the export of which the Governor in Council deems it necessary to control for any of the following purposes:
 - (a) to ensure that arms, ammunition, implements or munitions of war, naval, army or air

stores or any articles deemed capable of being converted thereinto or made useful in the production thereof or otherwise having a strategic nature or value will not be made available to any destination where their use might be detrimental to the security of Canada;

- (b) to ensure that any action taken to promote the further processing in Canada of a natural resource that is produced in Canada is not rendered ineffective by reason of the unrestricted exportation of that natural resource;
- (c) to limit or keep under surveillance the export of any raw or processed material that is produced in Canada in circumstances of surplus supply and depressed prices and that is not a produce of agriculture;
- (c.1) to restrict, for the purpose of supporting the enforcement of the *Softwood Lumber Products Export Charge Act*, the export of softwood lumber products set out in Part II of the schedule to that Act;
- (d) to implement an intergovernmental arrangement or commitment; or
- (e) to ensure that there is an adequate supply and distribution of the article in Canada for defence or other needs. R.S.C. 1985, c. 12 (3rd Supp.), s. 26.
- **4.** Export Control List of Countries.—The Governor in Council may establish a list of countries, to be called an Area Control List, including therein any country to which the Governor in Council deems it necessary to control the export of any goods.
- **4.1.** Automatic Firearms Country Control List.—The Governor in Council may establish a list of countries, to be called an Automatic Firearms Country Control List, including therein only countries with which Canada has an intergovernmental defence, research, development and production arrangement and to which the Governor in Council deems it appropriate to permit the export of a prohibited weapon described in paragraph (c) or (e) of the definition "prohibited weapon" in subsection 84(1) of the *Criminal Code*, or components or parts thereof, that is included in an Export Control List. S.C. 1991, c. 28, s. 2.
- **5.** (1) **Import Control List of Goods.**—The Governor in Council may establish a list of goods, to be called an Import Control List, including therein any article the import of which the Governor in Council deems it necessary to control for any of the following purposes:
 - (a) to ensure, in accordance with the needs of Canada, the best possible supply and distribution of an article that is scarce in world markets or is subject to governmental controls in the countries of origin or to allocation by intergovernmental arrangement;
 - (b) to restrict, for the purpose of supporting any action taken under the *Farm Products Marketing Agencies Act*, the importation in any form of a like article to one produced or marketed in Canada the quantities of which are fixed or determined under that Act;
 - (c) to restrict, for the purpose of supporting any action taken under the *Meat Import Act*, the importation of products to which that Act applies;
 - (c.1) to restrict the importation of arms, ammunition, implements or munitions of war, army, naval or air stores, or any articles deemed capable of being converted thereinto or made useful in the production thereof;
 - (d) to implement any action taken under the Agricultural Stabilization Act, the Fisheries Prices Support Act, the Agricultural Products Cooperative Marketing Act, the Agricultural Products Board Act or the Canadian Dairy Commission Act, with the object or effect of supporting the price of the article; or
 - (e) to implement an intergovernmental arrangement or commitment.

- (2) Statement of summary to be laid before Parliament.—Where any goods are included in the Import Control List for the purpose of ensuring supply or distribution of goods subject to allocation by intergovernmental arrangement or for the purpose of implementing an intergovernmental arrangement or commitment, a statement of the effect or a summary of the arrangement or commitment, if it has not previously been laid before Parliament, shall be laid before Parliament not later than fifteen days after the order of the Governor in Council including those goods in the Import Control List is published in the Canada Gazette pursuant to the Statutory Instruments Act or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that either House of Parliament is sitting.
- (3) Addition to Import Control List.—Where at any time it appears to the satisfaction of the Governor in Council, on a report of the Minister made pursuant to an inquiry made under section 20 or 26 of the Canadian International Trade Tribunal Act by the Canadian International Trade Tribunal in respect of any goods, that goods of any kind are being imported or are likely to be imported into Canada at such prices, in such quantities and under such conditions as to cause or threaten serious injury to the production in Canada of like or directly competitive goods, any goods of the same kind may, by order of the Governor in Council, be included on the Import Control List, for the purpose of limiting the importation of such goods to the extent and, subject to subsection (7), for the period that in the opinion of the Governor in Council is necessary to prevent or remedy the injury.
- (4) Exception for goods imported from a NAFTA country. —Notwithstanding subsection (3), no order made under subsection (3) may apply to goods imported from a NAFTA country unless it appears to the satisfaction of the Governor in Council, on a report of the Minister made pursuant to an inquiry under section 20 or 26 of the Canadian International Trade Tribunal Act that
 - (a) the quantity of those goods represents a substantial share of the quantity of goods of the same kind imported into Canada from all countries; and
 - (b) the quantity of those goods, alone, or in exceptional circumstances together with the quantity of goods of the same kind imported into Canada from each other NAFTA country, contributes importantly to the serious injury or threat of serious injury to domestic producers of like or directly competitive goods.
- (4.01) New order with respect to goods imported from a NAFTA country. —Where an order has been made under subsection (3) that does not, by virtue of subsection (4), apply to goods imported from a NAFTA country and it appears to the satisfaction of the Governor in Council, on a report of the Minister made pursuant to an inquiry under section 30.01 of the Canadian International Trade Tribunal Act that
 - (a) there has been a surge of like goods imported from the NAFTA country on or after the coming into force of the order, and
 - (b) as a result of the surge the effectiveness of the order is being undermined.
- any goods of the same kind imported into Canada from the NAFTA country may, by order of the Governor in Council, be included on the Import Control List for the purpose of limiting the importation of those goods into Canada to prevent the undermining of the effectiveness of the order made under subsection (3).
- (4.02) Order to specify whether it applies to goods imported from a NAFTA country.—Any order made under subsection (3) shall state whether it applies to goods imported from a NAFTA country.
 - (4.03) Addition to Import Control List. Where at any time it appears to the satisfac-

tion of the Governor in Council that it is advisable to collect information with respect to the importation into Canada of any goods from a NAFTA country

- (a) to which goods an order made under subsection (3) does not apply by virtue of subsection (4), or
- (b) to which goods an order made under subsection 59.1(1) of the *Customs Tariff* does not apply by virtue of subsection 59.1(3) of that Act,

the Governor in Council may, by order, include those goods on the Import Control List in order to facilitate the collection of that information.

- (4.04) **Definition of "surge".**—For the purposes of this section "surge" has the meaning given that term by Article 805 of NAFTA.
- (4.05) Suspension of subsections (4.1) to (4.5).—The operation of subsections (4.1) to (4.5) is suspended during the period in which subsections (4) to (4.04) are in force.
- (4.1) Exception for goods originating in the United States.—Notwithstanding subsection (3), no order made under subsection (3) may apply to goods of any kind originating in the United States unless it appears to the satisfaction of the Governor in Council, on a report of the Minister made pursuant to an inquiry under section 20 or 26 of the *Canadian International Trade Tribunal Act* that the quantity of those goods is substantial in comparison with the quantity of goods of the same kind originating in other countries and that the importation of those goods originating in the United States contributes importantly to the serious injury or threat thereof to the production in Canada of like or directly competitive goods.
- (4.2) New order with respect to goods originating in the United States.—Where an order has been made under subsection (3) that does not, by virtue of subsection (4.1), apply to goods originating in the United States and it appears to the satisfaction of the Governor in Council, on a report of the Minister that
 - (a) there has been a surge of those goods imported into Canada on or after the coming into force of the order, and
 - (b) as a result thereof the effectiveness of the order is being undermined,

any goods of the same kind originating in the United States may, by order of the Governor in Council, be included on the Import Control List for the purpose of limiting the importation of those goods to prevent the undermining of the effectiveness of the order made under subsection (3).

- (4.3) Order to specify whether includes goods originating in the United States.—Any order made under subsection (3) shall state whether it applies to goods originating in the United States.
- (4.4) **Addition to Import Control List.**—Where at any time it appears to the satisfaction of the Governor in Council that it is advisable to collect information with respect to the importation of any goods originating in the United States
 - (a) to which an order under subsection (3) does not apply by virtue of subsection (4.1), or
 - (b) to which an order under subsection 60(1) of the *Customs Tariff* does not apply because the quantity of those goods is not substantial in comparison with the quantity of goods of the same kind originating in other countries or because those goods do not contribute importantly to the serious injury or threat thereof to Canadian producers of like or directly competitive products,

the Governor in Council may, or order, include those goods on the Import Control List in order to facilitate the collection of that information.

- (4.5) **Definition of "surge".**—For the purposes of this section, "surge" has the meaning given that term by Article 1104 of the Free Trade Agreement.
- (5) Addition to Import Control List.—Where at any time it appears to the satisfaction of the Governor in Council on a report of the Minister made as described in subsection (3) that goods of any kind are being imported or are likely to be imported into Canada at such prices, in such quantities and under such conditions as to make it advisable to collect information with respect to the importation of those goods in order to ascertain whether the importation is causing or threatening injury to the production in Canada of like or directly competitive goods, any goods of the same kind may, by order of the Governor in Council, be included on the Import Control List in order to facilitate the collection of that information.
- (6) **Idem.**—Where, for the purpose of facilitating the implementation of action taken under sections 42 to 44 or paragraph 59(2)(d), 59.1(1)(d) or 60(1)(e) of the *Customs Tariff*, the Governor in Council considers it necessary to collect information with respect to the importation of any goods, the Governor in Council may, by order, include those goods on the Import Control List for that purpose.
- (7) Goods deemed to be removed from list.—Where goods are included on the Import Control List by order of the Governor in Council under subsection (3), (5) or (6), the goods shall be deemed to be removed from that List
 - (a) on the expiration of the period of three years after the day on which they are included on the List by the order; or
 - (b) if the order specifies a day prior to the expiration of the period referred to in paragraph (a) on which they shall be deemed to be removed from that List, on the day specified in the order.
- (7.1) **Idem.**—Where goods imported from a NAFTA country are included on the Import Control List by order of the Governor in Council under subsection (4.01) or (4.03), the goods shall be deemed to be removed from that List on the earlier of
 - (a) the day specified in the order, and
 - (b) the day on which
 - (i) in the case of an order under subsection (4.01) or under subsection (4.03) in respect of goods referred to in paragraph (4.03)(a), goods of the same kind imported from any other country that were included on that List by an order made under subsection (3) are removed from that List, or
 - (ii) in the case of an order under subsection (4.03) in respect of goods referred to in paragraph (4.03)(b), the order under subsection 59.1(1) of the *Customs Tariff* that applies to goods of the same kind imported from any other country ceases to have effect.
- (7.2) **Suspension of subsection** (8).—The operation of subsection (8) is suspended during the period in which subsection (7.1) is in force.
- (8) **Idem.**—Where goods originating in the United States are included on the Import Control List by order of the Governor in Council under subsection (4.2) or (4.4), the goods shall be deemed to be removed from that List on the earlier of
 - (a) the day specified in the order, and
 - (b) the day on which
 - (i) in the case of an order under subsection (4.2) or paragraph (4.4)(a), goods of the

same kind originating in other countries that were included on that List by an order made under subsection (3) are removed from that List, or

- (ii) in the case of an order under paragraph (4.4)(b), the order under subsection 60(1) of the *Customs Tariff* that applies to goods of the same kind originating in other countries ceases to have effect. R.S.C. 1985, c. 1 (2nd Supp.), s. 213(1); R.S.C. 1985, c. 41 (3rd Supp.), s. 127; R.S.C. 1985, c. 47 (4th Supp.), s. 52; S.C. 1988, c. 65, s. 117; S.C. 1993, c. 34, s. 67; S.C. 1993, c. 44, s. 147.
- **5.1** (1) Addition to Export Control List or Import Control List.—Where at any time it appears to the satisfaction of the Governor in Council that it is advisable to collect information with respect to the exportation or importation of a certain type of steel or a certain product made of steel that is, in the opinion of the Minister, traded in world markets in circumstances of surplus supply and depressed prices and where a significant proportion of world trade in that type of steel or that product is subject to control through the use of non-tariff measures, the Governor in Council may, by order, include, subject to subsection (2), that type of steel or that product on the Export Control List or the Import Control List or on both for the purpose of facilitating the collection of that information.
- (2) **Deemed removal from list.**—Where any type of steel or any product has been included on the Export Control List or the Import Control List by order of the Governor in Council under subsection (1), that type of steel or that product shall be deemed to be removed from the applicable List on the expiration of the period of three years from the day on which it was included on that List or on such day prior to the expiration of that period as may be specified in the order.
- (3) Tabling of statistical summary in Parliament.—The Minister shall, as soon as possible after the end of each calendar year, prepare a statistical summary of any information collected during that year pursuant to subsection (1) and shall cause a copy of that summary to be laid before each House of Parliament forthwith on the completion thereof or, if either House of Parliament is not then sitting, on any of the first fifteen days next thereafter that it is sitting. R.S.C. 1985, c. 13 (3rd Supp.), s. 1.
- 5.11 (1) Addition to Export Control List or Import Control List.—Where at any time it appears to the satisfaction of the Governor in Council that it is advisable to collect information with respect to the exportation or importation of any goods in respect of which a specified quantity is eligible each year for the rate of duty provided for in the Schedules to Annex 302.2 of Chapter Three of NAFTA in accordance with Appendix 6 of Annex 300-B of that Chapter, the Governor in Council may, by order and without reference to that quantity, include those goods on the Export Control List or the Import Control List or on both in order to facilitate the collection of that information.
- (2) **Idem.**—Where at any time it appears to the satisfaction of the Governor in Council that, for the purposes of implementing NAFTA, it is advisable to collect information with respect to the importation into Canada of any goods listed in Appendix 1.1 of Annex 300-B of Chapter Three of NAFTA, the Governor in Council may, by order, include those goods on the Import Control List in order to facilitate the collection of that information.
- (3) **Idem.**—Where at any time it appears to the satisfaction of the Governor in Council that it is advisable to collect information with respect to the importation of any goods in respect of which a specified quantity is eligible for a benefit of any reduction of customs duty pursuant to subsection 60.3(3) of the *Customs Tariff*, the Governor in Council may, by order and without reference to that quantity, include those goods on the Import Control List in order to facilitate the collection of that information.

- (4) Suspension of section 5.2.—The operation of section 5.2 in suspended during the period in which this section is in force. S.C. 1993, c. 44, s. 148.
- 5,2 (1) Addition to Export Control List or Import Control List.—Where at any time it appears to the satisfaction of the Governor in Council that it is advisable to collect information with respect to the exportation or importation of any goods in respect of which a specified quantity is eligible each year for the rate of duty provided for in Annex 401.2 of the Free Trade Agreement by virtue of Rule 17 or 18 of Section XI of Annex 301.2 of the Free Trade Agreement, the Governor in Council may, by order and without reference to that quantity, include those goods on the Export Control List or the Import Control List or on both in order to facilitate the collection of that information.
- (2) Idem.—Where at any time it appears to the satisfaction of the Governor in Council that, for the purposes of implementing the Free Trade Agreement, it is advisable to collect information with respect to the importation into Canada of fabric or yarn produced or obtained in a country other than Canada or the United States, the Governor in Council may, by order, include that fabric or yarn on the Import Control List in order to facilitate the collection of that information, S.C. 1988, c. 65, s. 118.
- **6.** Amendment of lists.—The Governor in Council may revoke, amend, vary or reestablish any Area Control List, Automatic Firearms Country Control List, Export Control List or Import Control List, S.C. 1991, c. 28, s. 3.

BILATERAL EMERGENCY MEASURES: TEXTILE AND APPAREL GOODS

- **6.1** (1) **Definition of "originating goods".**—In this section, "originating goods" means goods that are entitled under subsection 25.2(5.1) of the *Customs Tariff* to the benefit of the United States Tariff or the Mexico Tariff.
- (2) When Minister may take measures.—Where at any time it appears to the satisfaction of the Minister that any goods that are listed in Appendix 1.1 of Annex 300-B of Chapter Three of NAFTA and are not originating goods are being imported from a NAFTA country in such increased quantities, measured in absolute terms or relative to the domestic market, and under such conditions as to cause serious damage or actual threat thereof to domestic producers of like or directly competitive goods, the Minister may take the measures set out in section 5 of Annex 300-B of Chapter Three of NAFTA in relation to those goods.
- (3) Factors to be considered.—In determining whether the conditions referred to in subsection (2) exist, the Minister shall have regard to paragraph 2 of section 4 of Annex 300-B of Chapter Three of NAFTA. S.C. 1993, c. 44, s. 149.

PERMITS AND CERTIFICATES

- 7. (1) Export permits.—Subject to subsection (2), the Minister may issue to any resident of Canada applying therefor a permit to export goods included in an Export Control List or goods to a country included in an Area Control List, in such quantity and of such quality, by such persons, to such places or persons and subject to such other terms and conditions as are described in the permit or in the regulations.
- (2) Export permit for automatic firearm.—The Minister may not issue a permit under subsection (1) to export a prohibited weapon described in paragraph ic for ier of the definition "prohibited weapon" in subsection \$4(1) of the Criminal Code, or any component or part thereof, that is included in an Export Control List unless
 - (a) the export is to a country included in an Automatic Firearms Country Control List, and

- (b) the prohibited weapon or component or part thereof is exported to the government of, or a consignee authorized by the government of, that country. S.C. 1991, c. 28, s. 3.
- **8.** (1) **Import permits.**—The Minister may issue to any resident of Canada applying therefor a permit to import goods included in an Import Control List, in such quantity and of such quality, by such persons, from such places or persons and subject to such other terms and conditions as are described in the permit or in the regulations.
- (2) **Idem.**—Notwithstanding subsection (1) and any regulation made pursuant to section 12 that is not compatible with the purpose of this subsection, where goods are included on the Import Control List solely for the purpose described in subsection 5(4.03), (4.4), (5) or (6), the Minister shall issue to any resident of Canada applying therefor a permit to import those goods, subject only to compliance with and the application of such regulations made pursuant to section 12 as it is reasonably necessary to comply with or apply in order to achieve that purpose.
- (2.1) **Idem.**—Where, by virtue of subsection 5(4), an order has been made pursuant to subsection 5(3) that applies to goods imported from a NAFTA country, or an order has been made pursuant to subsection 5(4.01), the Minister shall, in determining whether to issue a permit under this section in respect of goods imported from a NAFTA country, be guided by subparagraph 5(b) of Article 802 of NAFTA.
- (2.2) **Suspension of subsection** (3).—The operation of subsection (3) is suspended during the period in which subsection (2.1) is in force.
- (3) **Idem.**—Where, by virtue of subsection 5(4.1), an order has been made pursuant to subsection 5(3) that applies to goods originating in the United States or an order has been made pursuant to subsection 5(4.2), the Minister shall, in determining whether to issue permits under section 8 in respect of goods originating in the United States, be guided by subparagraph 4(b) of Article 1102 of the Free Trade Agreement. S.C. 1988, c. 65, s. 119; S.C. 1993, c. 44, s. 150.
- **8.1. Import and export permits.**—Notwithstanding section 7, subsection 8(1) and any regulation made pursuant to section 12 that is not compatible with the purpose of this section, where a certain type of steel or a product made of steel is included on the Export Control List or the Import Control List solely for the purpose described in subsection 5.1(1), the Minister shall issue to any resident of Canada applying therefor a permit to export or import, as the case may be, that type of steel or that product, subject only to compliance with and the application of such regulations made pursuant to section 12 as it is reasonably necessary to comply with or apply in order to achieve that purpose. R.S.C. 1985, c. 13 (3rd Supp.), s. 2.
- **8.2.** Minister to issue permit.—Notwithstanding section 7, subsection 8(1) and any regulation made pursuant to section 12 that is not compatible with the purpose of this section, where goods are included on the Export Control List or the Import Control List solely for the purpose described in subsection 5.11(1), (2) or (3) or 5.2(1) or (2), the Minister shall issue to any resident of Canada applying therefor a permit to export or import, as the case may be, those goods, subject only to compliance with the application of such regulations made pursuant to section 12 as it is reasonably necessary to comply with or apply in order to achieve that purpose. S.C. 1988, c. 65, s. 120; S.C. 1993, c. 44, s. 151.
- **9.** Import certificates.—The Minister may, in order to facilitate importation of goods into Canada and compliance with the laws of the country of export, issue to any resident of Canada applying therefor an import certificate stating that the applicant has undertaken to import the goods described in the certificate within the time specified therein and containing such other information as the regulations require.
 - 9.01 (1) Minister may issue certificate.—The Minister may, for the purpose of imple-

menting an intergovernmental arrangement with a NAFTA country respecting the administration of Appendix 6 to Annex 300-B of Chapter Three of NAFTA, issue a certificate with respect to an exportation of goods to the NAFTA country stating the specific quantity of the goods in the shipment in respect of which the certificate is issued that, on importation into the NAFTA country, is eligible for the rate of duty provided for in the Schedules to Annex 302.2 of NAFTA in accordance with Appendix 6 to Annex 300-B of Chapter Three of NAFTA.

- (2) **Suspension of section 9.1.**—The operation of section 9.1 is suspended during the period in which this section is in force. S.C. 1993, c. 44, s. 152.
- 9.1. Minister may issue certificate.—The Minister may, for the purpose of implementing an intergovernmental arrangement with the United States respecting the administration of Rules 17 and 18 of Section XI of Annex 301.2 of the Free Trade Agreement, issue a certificate with respect to an exportation of goods to the United States stating the specific quantity of the goods in the shipment in respect of which the certificate is issued that, on importation into the United States, is eligible for the rate of duty provided for in Annex 401.2 of the Free Trade Agreement. S.C. 1988, c. 65, s. 121.
- **10.** (1) **Alteration of permits, etc.** —Subject to subsection (3), the Minister may amend, suspend, cancel or reinstate any permit, certificate or other authorization issued or granted under this Act.
- (2) **Idem.**—Where a permit has been issued under this Act to any person for the exportation or the importation of goods that have been included on the Export Control List or the Import Control List solely for the purpose described in subsection 5(4.03), (4.4), (5) or (6), 5.1(1), 5.11(1), (2) or (3) or 5.2(1) or (2) and
 - (a) the person furnished, in or in connection with his application for the permit, information that was false or misleading in a material particular,
 - (b) the Minister has, subsequent to the issuance of the permit and on the application of the person, issued to the person under this Act another permit for the importation of the same goods,
 - (c) the goods have, subsequent to the issuance of the permit, been included on the Export Control List or the Import Control List for a purpose other than that described in subsection 5(4.03), (4.4), (5) or (6), 5.1(1), 5.11(1), (2) or (3), or 5.2(1) or (2),
 - (d) it becomes necessary or desirable to correct an error in the permit, or
 - (e) the person agrees to the amendment, suspension or cancellation of the permit.
- the Minister may amend, suspend or cancel the permit, as is appropriate in the circumstances.
- (3) Except as provided in subsection (2), the Minister shall not amend, suspend or cancel a permit that has been issued under this Act in the circumstances described in that subsection unless to do so would be compatible with the purpose of subsection 8(2) or section 8.1 or 8.2, namely, that permits to export or to import goods that have been included on the Export Control List or the Import Control List in those circumstances be issued as freely as possible to persons wishing to export or import those goods and with no more inconvenience to those persons than is necessary to achieve the purpose for which the goods were placed on that List. R.S.C. 1985. c. 13 (3rd Supp.), s. 3; S.C. 1988, c. 65, s. 122; S.C. 1993, c. 44, s. 153.
- 11. Other lawful obligations not affected by permit, etc. A permit, certificate or other authorization issued or granted under this Act does not affect the obligation of any person to obtain any licence, permit or certificate to export or import that may be required under this or any other law or to pay any tax, duty, toll, impost or other sum required by any law to be paid in respect of the exportation or importation of goods.

REGULATIONS

- 12. Regulations.—The Governor in Council may make regulations
- (a) prescribing the information and undertakings to be furnished by applicants for permits, certificates or other authorizations under this Act, the procedure to be followed in applying for and issuing or granting permits, certificates or other authorizations, the duration thereof, and the terms and conditions, including those with reference to shipping or other documents, on which permits, certificates or other authorizations may be issued or granted under this Act;
- (b) respecting information to be supplied by persons to whom permits, certificates or other authorizations have been issued or granted under this Act and any other matter associated with their use;
- (c) respecting the issue of, and conditions or requirements applicable to, general permits or general certificates;
- (c.1) providing for considerations to be taken into account by the Minister in the issuance of certificates under section 9.1;
- (c.01) providing for considerations to be taken into account by the Minister in the issuance of certificates under section 9.01;
- (c.2) defining "origin" for the purposes of this Act or any provision thereof;
- (c.3) respecting the application, for the purposes of this Act or any provision thereof, of any regulations made under the *Customs Tariff* respecting the origin of goods;
- (d) respecting the certificate, authorization or other control of any in-transit movement through any port or place of any goods that are exported from Canada or of any goods that come into any port or place in Canada;
- (e) exempting any person or goods or any class of persons or goods from the operation of any or all of the provisions of this Act; and
- (f) generally, for carrying out the purposes and provisions of this Act. S.C. 1988, c. 65, s. 123; S.C. 1993, c. 44, s. 154.

PROHIBITIONS

- 13. Export or attempt to export.—No person shall export or attempt to export any goods included in an Export Control List or any goods to any country included in an Area Control List except under the authority of and in accordance with an export permit issued under this Act.
- **14. Import or attempt to import.**—No person shall import or attempt to import any goods included in an Import Control List except under the authority of and in accordance with an import permit issued under this Act. R.S., c. E-17 s. 14.
- 15. (1) Diversion, etc.—Subject to subsection (2), except with the authority in writing of the Minister, no person shall knowingly do anything in Canada that causes or assists or is intended to cause or assist any shipment, transshipment or diversion of any goods included in an Export Control List to be made, from Canada or any other place, to any country included in an Area Control List.
- (2) **Diversion, etc., of automatic firearms.**—No person shall knowingly do anything in Canada that causes or assists or is intended to cause or assist any shipment, transshipment or diversion of any prohibited weapon described in paragraph (c) or (e) of the definition

"prohibited weapon" in subsection 84(1) of the *Criminal Code*, or any component or part designed exclusively for assembly into such a prohibited weapon, that is included in an Export Control List, from Canada or any other place, to any country that is not included in an Automatic Firearms Country Control List, S.C. 1991, c. 28, s. 4.

- 16. No transfer or unauthorized use of permits.—No person who is authorized under a permit issued under this Act to export or import goods shall transfer the permit to, or allow it to be used by, a person who is not so authorized.
- 17. False or misleading information, and misrepresentation.—No person shall wilfully furnish any false or misleading information or knowingly make any misrepresentation in any application for a permit, certificate or other authorization under this Act or for the purpose of procuring its issue or grant or in connection with any subsequent use of the permit, certificate or other authorization or the exportation, importation or disposition of goods to which it relates.
- 18. Aiding and abetting.—No person shall knowingly induce, aid or abet any person to contravene any of the provisions of this Act or the regulations.

OFFENCE AND PUNISHMENT

- 19. (1) Offence and penalty. —Every person who contravenes any provision of this Act or the regulations is guilty of
 - (a) an offence punishable on summary conviction and liable to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding twelve months, or to both; or
 - (b) an indictable offence and liable to a fine in an amount that is in the discretion of the court or to imprisonment for a term not exceeding ten years, or to both.
- (2) A prosecution under paragraph (1)(a) may be instituted at any time within but not later than three years after the time when the subject-matter of the complaint arose.
- (3) **Factors to be considered when imposing sentence.** Where an offender is convicted or discharged under section 736 of the *Criminal Code* in respect of an offence under this Act or the regulations, the court imposing a sentence on, or discharging, the offender shall, in addition to considering any other relevant factors, consider the nature and value of the exported or imported goods that are the subject-matter of the offence. S.C. 1991, c. 28, s. 5.
- **20.** Officers, etc., of corporations.—Where a corporation commits an offence under this Act, any officer or director of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.
- 21. Applicant for permit for non-resident.—Where a permit under this Act is issued to a person who has applied for it for, on behalf of, or for the use of, another person who is not a resident of Canada and that other person commits an offence under this Act, the person who applied for the permit is, whether or not the non-resident has been prosecuted or convicted, guilty of the like offence and liable, on conviction, to the punishment provided for the offence, on proof that the act or omission constituting the offence took place with the knowledge or consent of the person who applied for the permit or that the person who applied therefor failed to exercise due diligence to prevent the commission of the offence.
 - 22. (1) Venue.—Any proceeding in respect of an offence under this Act may be instituted.

tried or determined at the place in Canada where the offence was committed or at the place in Canada in which the person charged with the offence is, resides or has an office or place of business at the time of institution of the proceedings.

- (2) Proceedings respecting more than one offence.—In any proceedings in respect of offences under this Act.
 - (a) an information may include more than one offence committed by the same person;
 - (b) all the offences included in the information may be tried concurrently;
 - (c) one conviction for any or all offences so included may be made; and
 - (d) no information, warrant, summons, conviction or other proceedings for those offences shall be deemed objectionable on the ground that it relates to two or more offences.
- 23. (1) Evidence.—The original or a copy of a bill of lading, customs form, commercial invoice or other document, in this section called a "shipping document", is admissible in evidence in any prosecution under this Act in respect of goods where it appears from the shipping document that
 - (a) the goods were sent or shipped from Canada or came into Canada;
 - (b) a person, as shipper, consignor or consignee, sent or shipped the goods from Canada or brought goods into Canada; or
 - (c) the goods were sent to a destination or person other than as authorized in any export or import permit relating to the goods.
- (2) **Proof of the facts.**—In the absence of evidence to the contrary, a shipping document that is admissible in evidence under subsection (1) is proof of any of the facts set out in paragraph (1)(a), (b) or (c) that appear from the shipping document.

GENERAL

- **24.** Customs officers' duties.—All officers, as defined in the *Customs Act*, before permitting the export or import of any goods, shall satisfy themselves that the exporter or importer, as the case may be, has not contravened any of the provisions of this Act or the regulations and that all requirements of this Act and the regulations with reference to those goods have been complied with. R.S.C. 1985, c. 1 (2nd Supp.), s. 213(2), (4).
- 25. Application of powers under the *Customs Act*.—All officers, as defined in the *Customs Act*, have, with respect to any goods to which this Act applies, all the powers they have under the *Customs Act* with respect to the importation and exportation of goods, and all the provisions of that Act and the regulations thereunder respecting search, detention, seizure, forfeiture and condemnation apply, with such modifications as the circumstances require, to any goods that are tendered for export or import or exported or imported or otherwise dealt with contrary to this Act and the regulations and to all documents relating to those goods. R.S.C. 1985, c. 1 (2nd Supp.), s. 213(2), (4).
- **26.** Certain officers deemed customs officers.—For the purposes of section 108 of the *Customs Act*, all officers of the Department of External Affairs employed in the administration of this Act shall be deemed to be officers as defined in subsection 2(1) of the *Customs Act*. R.S.C. 1985, c. 1 (2nd Supp.), s. 213(1).

REPORT TO PARLIAMENT

REPORT TO PARLIAMENT

27. Annual report.—As soon as practicable after December 31 of each year, the Minister shall prepare and lay before Parliament a report of the operations under this Act for that year.



IMPORTATION OF INTOXICATING LIQUORS ACT

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IMPORTATION OF INTOXICATING LIQUORS ACT

- R.S.C. 1985, c. I-3, as am. R.S.C. 1985, c. 27 (1st Supp.), s. 203; R.S.C. 1985 (4th Supp.), c. 40, s. 2; S. C. 1988, c. 65, s. 132; S.C. 1993, c. 44, ss. 159-60
 - 1. Short title.—This Act may be cited as the Importation of Intoxicating Liquors Act.
 - 2. Definitions.—In this Act,
- "intoxicating liquor".—"intoxicating liquor" means any liquor that is, by the law of the province for the time being in force, deemed to be intoxicating liquor and that it is unlawful to sell or have in possession without a permit or other authority of the government of the province or any board, commission, officer or other governmental agency authorized to issue the permit or grant the authority;
- "NAFTA country".—"NAFTA country" has the meaning assigned to the expression "NAFTA country" by subsection 2(1) of the North American Free Trade Agreement Implementation Act;
- "province".—"province" means any province in which there is in force an Act giving the government of the province or any board, commission, officer or other governmental agency control over the sale of intoxicating liquor therein. S.C. 1993, c. 44, s. 159.
- **3.** (1) **Prohibitions.**—Notwithstanding any other Act or law, no person shall import, send, take or transport, or cause to be imported, sent, taken or transported, into any province from or out of any place within or outside Canada any intoxicating liquor, except such as has been purchased by or on behalf of, and that is consigned to Her Majesty or the executive government of, the province into which it is being imported, sent, taken or transported, or any board, commission, officer or other governmental agency that, by the law of the province, is vested with the right of selling intoxicating liquor.
- (1.1) **Suspension of paragraph** (2)(b.1).—The operation of paragraph (2)(b.1) is suspended during the period in which paragraph (2)(b.01) is in force.
 - (2) Exceptions.—The provisions of subsection (1) do not apply to
 - (a) the carriage or transportation of intoxicating liquor into and through a proxince by means only of a common carrier by water or by railway, including any necessary transfer by truck from railway car to ship or vice versa, if, during the time the intoxicating liquor is being so carried or transported, the package or vessel containing the intoxicating liquor is not opened or broken or any of the intoxicating liquor drunk or used therefrom:
 - (b) the importation of intoxicating liquor into a province by any person duly licensed by the Government of Canada to carry on the business or trade of a distiller or brewer where the intoxicating liquor is imported solely for the purpose of being used for blending with or flavouring the products of the business or trade of a distiller or brewer carried on by him in the province, and while kept by him in the province is kept in a place or warehouse that conforms in all respects to the requirements of the law governing those places or warehouses, and is used solely for blending with or flavouring the products of his business or trade as a distiller or brewer:
 - (b.01) the importation of distilled spirits in bulk into a province from a NAFTA country for the purpose of bottling by any person duly licensed by the Government of Canada to carry on the business or trade of a distiller, where the distilled spirits
 - (i) are entitled to the benefit of the United States Tariff, the Mexico-Tariff or the Mexico-United States Tariff of Schedules I and II to the Customs Iariff, and

- (ii) while kept by the distiller, are kept by the distiller in a place or warehouse that conforms in all respects to the requirements of the law governing such places or warehouse:
- (b.1) the importation of distilled spirits in bulk into a province from the United States for the purpose of bottling by any person duly licensed by the Government of Canada to carry on the business or trade of a distiller, where the distilled spirits
 - (i) are entitled to the benefit of the United States Tariff of Schedule I to the Customs Tariff, and
 - (ii) while kept by the distiller, are kept by the distiller in a place or warehouse that conforms in all respects to the requirements of the law governing such places or warehouses; or
- (c) the transfer from one distillery to another of any spirits or liquor that is permitted by any Act or regulation in force or by special permit of the Department of National Revenue.
- (3) **Regulations.**—The Governor in Council may, for the purposes of paragraph (2(b.01) or (2)(b.1), make regulations defining the expressions "distilled spirits", "in bulk" and "bottling". S.C. 1988, c. 65, s. 132; S.C. 1993, c. 44, s. 160.
- **4. Burden of proof.**—The burden of proving the right to import, send, take or transport, or to cause to be imported, sent, taken or transported, any intoxicating liquor into any province is on the person accused.
- **5. Punishment.**—Every person who contravenes any of the provisions of this Act is guilty of an offence and liable on summary conviction
 - (a) for a first offence, to a fine not exceeding two hundred dollars, and in default of payment to imprisonment for any term not exceeding three months;
 - (b) for a second offence, to a fine of not less than two hundred dollars and not more than one thousand dollars, and in default of payment to imprisonment for any term not less than three months and not more than six months; and
 - (c) for each subsequent offence, to imprisonment for any term not less than six months and not more than twelve months.
- **6. Prosecution in place where liquor imported.**—A prosecution for any offence under this Act may be brought and carried on, and a conviction had, in the city, town or place to, from or into which any intoxicating liquor is unlawfully imported, sent, taken or transported or in the place where the accused resides, but no prosecution shall be brought in any province against a person not within or residing in that province without the written approval of the attorney general of that province.
- 7. (1) Search Warrants.—If it is proved on oath before a recorder, two justices of the peace or a provincial court judge or, in the Province of Quebec, a judge of the Court of Quebec, that there are reasonable grounds to suspect that any intoxicating liquor is in any premises or place and that the intoxicating liquor is or has been dealt with contrary to this Act, that officer may grant a warrant to search the premises or place, including any Government railway, vehicle or steamship, for the intoxicating liquor, and, if the intoxicating liquor or any part thereof is found in the premises or place, to seize and bring it before him.
- (2) **Forfeiture.**—Where any person is convicted of any offence against this Act, the officer or officers so convicting may adjudge and order, in addition to any other penalty, that the intoxicating liquor in respect of which the offence was committed and that has been seized under a search warrant granted under subsection (1), and all kegs, barrels, cases, boxes, bottles,

packages and other receptacles of any kind whatever found containing the intoxicating liquor, be forfeited and destroyed, and the order shall thereupon be carried out by the constable or peace officer who executed the search warrant or by such other person as may be authorized to do so by the officer or officers who have made the conviction. R.S.C. 1985, c. 27 (1st Supp.), s. 203; 1985, c. 40 (4th Supp.), s. 2(1).

8. Sacramental, medicinal and other purposes exempted.—Nothing in this Act shall be deemed to forbid the importing, sending, taking or transporting, or causing to be imported, sent, taken or transported, into any province from or out of any place within or outside Canada of intoxicating liquor for sacramental or medicinal purposes or for manufacturing or commercial purposes other than for the manufacture or use thereof as a beverage.

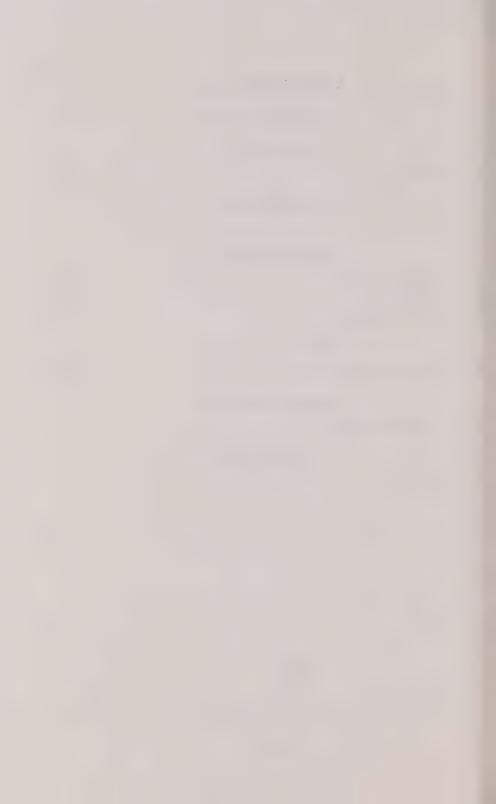


MEAT IMPORT ACT

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MEAT IMPORT ACT

R.S.C. 1985, c. M-3, as am. S.C. 1988, c. 65, s. 140; S.C. 1993, c. 44, s. 183.

SHORT TITLE

1. Short title.—This Act may be cited as the Meat Import Act.

INTERPRETATION

2. Definitions.—In this Act.

"meat".—"meat" means fresh, chilled and frozen beef and yeal;

"Minister".—"Minister" means the Minister of Agriculture.

IMPORT RESTRICTIONS

- **3.** (1) **Restriction of imports.**—The Minister may, by order, with the concurrence of the Secretary of State for External Affairs,
 - (a) on or before December 1 in any year or as soon as practicable thereafter, after taking into account the formula and considerations set out in the schedule and consultations with states exporting meat to Canada, establish such restrictions on the quantity of meat that may be imported into Canada in the following year as the Minister considers appropriate; or
 - (b) adjust, suspend or revoke any restrictions established under paragraph (a).
- (2) Restrictions may be adjusted, etc.—Where a state agrees to restrain or otherwise voluntarily restrain the quantity of its exports of meat to Canada, the Minister may, by order, with the concurrence of the Secretary of State for External Affairs, suspend or revoke any restrictions established under subsection (1) or adjust such restrictions so as to increase the quantity of meat that may be imported into Canada.
- (3) **Additional imports.**—Notwithstanding any restrictions established under subsection (1), the Minister may, by order, with the concurrence of the Secretary of State for External Affairs, permit the importation of meat into Canada in excess of the quantity authorized by those restrictions where the supply of beef, veal and other meats in Canada is, in his opinion, inadequate in relation to domestic requirements.
- **4. Limitation.**—Except as provided for in the General Agreement on Tariffs and Trade, the Minister may not establish under this Act restrictions on the quantity of meat that may be imported into Canada that would result in a quantity that is less than the minimum global access commitment agreed to by Canada in multilateral trade negotiations under that Agreement.
- **4.1** (1) **Limitation.**—Notwithstanding subsection 3(1) but subject to subsection (2), the Minister may not establish under this Act restrictions on the quantity of meat that is entitled to the benefit of the United States Tariff of Schedule I to the *Customs Tariff*.
- (2) **Exception.**—The Minister may establish under this Act restrictions on the quantity of meat that is entitled to the benefit of the United States Tariff of Schedule I to the *Customs Tariff* where restrictions on the quantity of meat have been established in relation to meat imported into Canada from a state, other than the United States, and no similar restrictions have been established by the United States in relation to the importation of meat from that state into the United States, but such restrictions may be established only to the extent and for such period of

time as is sufficient to prevent frustration of the restrictions on the quantity of meat that may be imported into Canada from that other state.

- (3) **Defintion of "United States".**—For the purposes of this section, "United States" has the same meaning as in section 2 of the *Canada-United States Free Trade Agreement Implementation Act.* S.C. 1988, c. 65, s. 140.
- **4.2. Limitation—Mexico.**—Notwithstanding subsection 3(1), the Minister may not establish under this Act restrictions on the quantity of meat that is entitled to the benefit of the Mexico Tariff of Schedule I to the *Customs Tariff*. S.C. 1993, c. 44, s. 183.

CUSTOMS DOCUMENTS

- 5. (1) Acquisition of customs documents.—Where the Minister notifies the Minister of National Revenue that he requires copies of invoices of goods imported into Canada or of other customs documents relating thereto for the purpose of carrying out his duties under this Act, the Minister of National Revenue may, notwithstanding subsection 172(3) of the *Customs Act*, chapter C-40 of the Revised Statutes of Canada, 1970, make such copies available to the Minister or to persons employed in the Department of Agriculture who have been designated by the Minister for the purposes of this section.
- (2) **Prohibition against divulging information.**—Except for the purposes of a prosecution under subsection (4) or (5), but subject to subsection (3),
 - (a) no person, other than a person who has been designated by the Minister for the purposes of this section, shall be permitted to examine copies of invoices or other documents made available by the Minister of National Revenue pursuant to subsection (1); and
 - (b) no person who has examined any such copy shall disclose or cause to be disclosed, by any means, any particulars obtained in the course of the examination in such manner that it is possible from that disclosure to relate the information to any identifiable importer or agent or customer of an importer.
- (3) **Exception to prohibition on disclosure.**—The Minister may, by order, authorize the following information to be disclosed:
 - (a) information relating to a person or organization in respect of which disclosure is consented to in writing by the person or organization concerned;
 - (b) information relating to a business in respect of which disclosure is consented to in writing by the owner for the time being of the business; and
 - (c) information available to the public under any statutory or other law.
- (4) **Offence.**—Every person who knowingly contravenes subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both.
- (5) **Idem.**—Every person who, having been designated by the Minister for the purposes of this section, uses any information obtained in the examination of copies of invoices or other documents made available by the Minister of National Revenue pursuant to subsection (1) for the purpose of speculating in any stocks, bonds or other security or in any product or article is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both.
- (6) **Information is privileged.**—Except for the purposes of a prosecution under subsection (4) or (5), any copy of an invoice or other document made available by the Minister of

National Revenue pursuant to subsection (1) is privileged and shall not be used as evidence in any proceedings whatever, and no person who has been designated by the Minister for the purposes of this section shall, by an order of any court, tribunal or other body, be required in any proceedings whatever to give oral testimony or to produce any copy of an invoice or other document with respect to any information obtained pursuant to this section.

ADVISORY COMMITTEE

- **6.** (1) **Advisory Committee.**—The Minister shall appoint an advisory committee consisting of a chairman and not less than two and not more than four other members representative of the meat industry and consumers.
- (2) **Temporary substitute members.**—If a member of the advisory committee is absent or unable to act, the Minister may appoint a temporary substitute member, representative of the same sector as the member replaced, on such terms and conditions as the Minister may prescribe.
- (3) Functions.—The advisory committee established under subsection (1) shall meet at the call of the Minister and shall advise the Minister with respect to such matters relating to the importation of meat into Canada as are referred to it by the Minister.
- (4) Remuneration and expenses.—The members of the advisory committee may be paid for their services such remuneration and expenses as are fixed by the Governor in Council.

ANNUAL REPORT

7. Annual report.—As soon as practicable after December 31 in each year, the Minister shall prepare and lay before Parliament a report of the operations under this Act for that year.

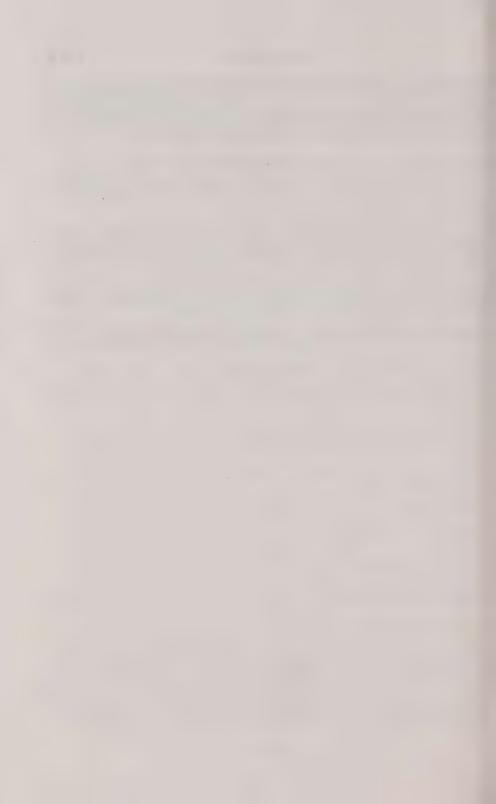


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An Act respecting the imposition of anti-dumping and countervailing duties

SHORT TITLE

1. [Short Title].—This Act may be cited as the Special Import Measures Act.

INTERPRETATION

- 2. (1) Definitions.—In this Act,
- "amount of the subsidy".—"amount of the subsidy", in relation to any subsidized goods, means
 - (a) the amount of the subsidy on the goods determined and adjusted in the prescribed manner, or
 - (b) where the manner of determining the amount of the subsidy has not been prescribed or, in the opinion of the Deputy Minister, sufficient information has not been furnished or is not available to enable the determination of the amount of the subsidy in the prescribed manner, the amount of the subsidy on the goods determined and adjusted in such manner as the Minister specifies;
- "Canadian Secretary".—"Canadian Secretary" means
 - (a) when Part I.1 is in force, the Secretary appointed pursuant to subsection 14(1) of the North American Free Trade Agreement Implementation Act, and
 - (b) when Part II is in force, the Secretary appointed pursuant to subsection 77.24(1);
- "country of export".—"country of export" means, in the case of dumped goods, the country from which the goods were shipped directly to Canada or, if the goods have not been shipped directly to Canada, the country from which the goods would be shipped directly to Canada under normal conditions of trade and, in the case of subsidized goods, the country in which the subsidy originated;
- "Deputy Minister".—"Deputy Minister" means the Deputy Minister of National Revenue;
- "designated officer".—"designated officer" means any officer, or any officer within a class of officers, designated pursuant to section 59 of the *Customs Act*;
- "dumped".—"dumped", in relation to any goods, means that the normal value of the goods exceeds the export price thereof;
- "duty".—"duty" means any duty, including provisional duty, imposed by virtue of this Act:
- "export price".—"export price" means export price determined in accordance with sections 24 to 30;
- "Free Trade Agreement".—"Free Trade Agreement" has the meaning assigned to the term

- "Agreement" by section 2 of the Canada-United States Free Trade Agreement Implementation Act;
- "government".—"government", in relation to any country other than Canada, means the government of that country and includes
 - (a) any provincial, state, municipal or other local or regional government in that country,
 - (b) any person, agency or institution acting for, on behalf of, or under the authority of, or under the authority of any law passed by, the government of that country or that provincial, state, municipal or other local or regional government, and
 - (c) any association of sovereign states of which that country is a member;
- "government of a NAFTA country".—"government of a NAFTA country" means such department, agency or other body of the government of a NAFTA country as is prescribed;
- "importer".—"importer", in relation to any goods, means the person who is in reality the importer of the goods;
- "like goods".—"like goods", in relation to any other goods, means
 - (a) goods that are identical in all respects to the other goods, or
 - (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods;
- "margin of dumping".—"margin of dumping", in relation to any goods, means the amount by which the normal value of the goods exceeds the export price thereof;
- "material injury".—"material injury" means, in respect of the dumping or subsidizing of any goods, material injury to the production in Canada of like goods, and includes, in respect only of the subsidizing of an agricultural product, an increase in the financial burden on a federal or provincial government agricultural support program in Canada;
- "member".—"member" [Repealed, R.S., 1985, c. 47 (4th Supp.), s. 52]
- "Minister".—"Minister" means the Minister of National Revenue;
- "NAFTA country".—"NAFTA country" has the meaning assigned that expression by subsection 2(1) of the *North American Free Trade Agreement Implementation Act*, but does not include Canada;
- "North American Free Trade Agreement".—"North American Free Trade Agreement" has the meaning assigned to the word "Agreement" by subsection 2(1) of the North American Free Trade Agreement Implementation Act;
- "normal value".—"normal value" means normal value determined in accordance with sections 15 to 23 and 29 and 30;
- "order or finding".—"order or finding", in relation to the Tribunal,
 - (a) means an order or finding made by the Tribunal pursuant to section 43 or 44 that has not been rescinded pursuant to subsection 91(3), and
 - (b) includes, for the purposes of sections 3 to 6 and 76, an order or finding made by the Tribunal pursuant to subsection 91(3),
- that has not been rescinded pursuant to section 76, but, where the order or finding has been amended one or more times pursuant to that section, as last so amended;
- "person".—"person" includes a partnership and an association;
- "prescribed".—"prescribed", in relation to a form, means prescribed by the Deputy Minister and, in any other case, means prescribed by regulation;

- "properly documented".—"properly documented", in relation to a complaint respecting the dumping or subsidizing of goods, means that
 - (a) the complaint
 - (i) alleges that the goods have been or are being dumped or subsidized, specifies the goods and alleges that the dumping or subsidizing has caused, is causing or is likely to cause material injury or has caused or is causing retardation,
 - (ii) states in reasonable detail the facts on which the allegations referred to in subparagraph (i) are based, and
 - (iii) makes such other representations as the complainant deems relevant to the complaint, and
 - (b) the complainant provides
 - (i) such information as is available to him to prove the facts referred to in subparagraph (a)(ii), and
 - (ii) such other information as the Deputy Minister may reasonably require him to provide;
- "provisional duty".—"provisional duty" means duty imposed under section 8:
- "regular member".—"regular member" [Repealed, R.S., 1985, c. 47 (4th Supp.), s. 52]
- "release".—"release", in respect of goods, means to authorize the removal of the goods from a customs office, sufferance warehouse, bonded warehouse or duty free shop for use in Canada;
- "retardation".—"retardation", in respect of the dumping or subsidizing of any goods, means material retardation of the establishment of the production in Canada of like goods:
- "sale".—"sale" includes leasing and renting, an agreement to sell, lease or rent and an irrevocable tender;
- "Secretary".—"Secretary" means the Secretary of the Tribunal;
- "Subsidies and Countervailing Duties Agreement". "Subsidies and Countervailing Duties Agreement" means the Agreement signed at Geneva, Switzerland, on December 17, 1979 and known as the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade;
- "subsidized goods".—"subsidized goods" means
 - (a) goods in respect of the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of which a subsidy has been or will be paid, granted, authorized or otherwise provided, directly or indirectly, by the government of a country other than Canada, and
- (b) goods that are disposed of at a loss by the government of a country other than Canada, and includes any goods in which, or in the production, manufacture, growth, processing or the like of which, goods described in paragraph (a) or (b) are incorporated, consumed, used or otherwise employed;
- "subsidy".—"subsidy" includes any financial or other commercial benefit that has accrued or will accrue, directly or indirectly, to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods, as a result of any scheme, program, practice or thing done, provided or implemented by the government of a country other than Canada, but does not include the amount of any duty or internal tax imposed on goods by the government of the country of origin or

country of export from which the goods, because of their exportation from the country of export or country of origin, have been exempted or have been or will be relieved by means of refund or drawback:

- "Tribunal".—"Tribunal" means the Canadian International Trade Tribunal established by subsection 3(1) of the Canadian International Trade Tribunal Act;
- "undertaking".—"undertaking" or "undertakings" means an undertaking or undertakings with respect to goods that are the subject of a dumping or subsidizing investigation under this Act given in writing to the Deputy Minister in any of the following circumstances:
 - (a) in the case of dumped goods, an undertaking given by an exporter who accounts for, or undertakings given individually by exporters who account for, all or substantially all the exports to Canada of the dumped goods where the exporter or each exporter, as the case may be, undertakes in his undertaking
 - (i) to revise, in the manner specified in his undertaking, the price at which he sells the goods to importers in Canada, or
 - (ii) to cease dumping the goods in Canada, and
 - (b) in the case of subsidized goods,
 - (i) an undertaking given by an exporter who accounts for, or undertakings given individually by exporters who account for, all or substantially all the exports to Canada of the subsidized goods, where the exporter or each exporter, as the case may be,
 - (A) has the consent of the government of the country of export of the goods to give the undertaking, and
 - (B) undertakes to revise, in the manner specified in his undertaking, the price at which he sells the goods to importers in Canada, or
 - (ii) an undertaking given by the government of a country that accounts for, or undertakings given by the governments of countries that account for, all or substantially all the exports to Canada of the subsidized goods where the country or each country, as the case may be, undertakes in its undertaking
 - (A) to eliminate the subsidy on goods exported to Canada from that country,
 - (B) to limit the amount of the subsidy on goods exported to Canada from that country,
 - (C) to limit the quantity of the goods to be exported to

Canada from that country, or

(D) otherwise to eliminate the effect of the subsidizing on the production in Canada of like goods,

in the manner specified in its undertaking;

- "United States government".—"United States government" means such department, agency or other body of the federal government of the United States as is prescribed.
- (2) **Definition of "associated persons".**—For the purposes of this Act, the following persons are "associated persons" or persons associated with each other, namely,
 - (a) persons related to each other; or
 - (b) persons not related to each other, but not dealing with each other at arm's length.
- (3) **Persons related to each other.**—For the purposes of subsection (2), persons are related to each other if

- (a) they are individuals connected by blood relationship, marriage or adoption within the meaning of subsection 251(6) of the *Income Tax Act*;
- (b) one is an officer or director of the other;
- (c) each such person is an officer or director of the same two corporations, associations, partnerships or other organizations;
- (d) they are partners;
- (e) one is the employer of the other;
- (f) they directly or indirectly control or are controlled by the same person;
- (g) one directly or indirectly controls or is controlled by the other;
- (h) any other person directly or indirectly owns, holds or controls five per cent or more of the outstanding voting stock or shares of each such person; or
- (i) one directly or indirectly owns, holds or controls five per cent or more of the outstanding voting stock or shares of the other.
- (4) **Persons dealing at arm's length.**—For the purposes of paragraph (2)(b), it is a question of fact whether persons not related to each other were at a particular time dealing with each other at arm's length.
- (5) Deputy Minister to take international agreement into account.—The Deputy Minister, in considering any question relating to the interpretation or application of the definition "subsidized goods" or "subsidy" or the expression "export subsidy", shall take fully into account the provisions of Articles 9 and 11 of the Subsidies and Countervalling Duties Agreement.
- (6) Agreement affecting countervailing duty. Notwithstanding the definition "amount of the subsidy", where, in relation to any subsidized goods, the manufacturer, producer, vendor or exporter thereof or the government of a country other than Canada, undertakes, directly or indirectly in any manner whatever, to indemnify, pay on behalf of or reimburse the importer or purchaser in Canada of the goods for all or any part of the countervailing duty that may be levied on the goods, the amount of the subsidy on the goods is, for the purposes of this Act, the amount of the subsidy determined and adjusted in such manner as is provided under that definition plus the amount of the indemnity, payment or reimbursement
- (7) Interpretation of provisions that apply to both dumped and subsidized goods. Where, by its terms, any provision of this Act applies to both dumped and subsidized goods, the application of the provision
 - (a) to subsidized goods shall not be taken into account in an investigation, inquiry or other proceeding or matter under this Act relating to the dumping of goods; and
 - (b) to dumped goods shall not be taken into account in an investigation, inquiry or other proceeding or matter under this Act relating to the subsidizing of goods.
- (8) Law relating to the customs.—For greater certainty, this Act shall be considered, for the purposes of the *Customs Act*, to be a law relating to the customs.
- (9) **Powers, duties and functions of Deputy Minister.**—Any power, duty or function of the Deputy Minister under this Act may be exercised or performed by any person authorized by the Deputy Minister to do so and, if so exercised or performed, shall be deemed to have been exercised or performed by the Deputy Minister. R.S.C. 1985, c. 23 (1st Supp.), s. 1; R.S.C.

1985, c. 1 (2nd Supp.), ss. 197, 213(3); R.S.C. 1985, c. 47 (4th Supp.), s. 52; S.C. 1988, c. 65, ss. 23, 24; S.C. 1993, c. 44, s. 201; S.C. 1994, c. 13, s. 7(1)(j).

PART I

SPECIAL IMPORT MEASURES

Anti-dumping and Countervailing Duty

- 3. Anti-dumping and countervailing duty.—There shall be levied, collected and paid on all dumped and subsidized goods imported into Canada in respect of which the Tribunal has made an order or finding, before the release of the goods, that the dumping or subsidizing of goods of the same description has caused, is causing or is likely to cause material injury or has caused or is causing retardation, a duty as follows:
 - (a) in the case of dumped goods, an anti-dumping duty in an amount equal to the margin of dumping of the imported goods; and
 - (b) in the case of subsidized goods, a countervailing duty in an amount equal to the amount of the subsidy on the imported goods.
- **4.** Other cases.—There shall be levied, collected and paid on all dumped and subsidized goods imported into Canada
 - (a) in respect of which the Tribunal has made an order or finding, after the release of the goods, that the dumping or subsidizing of goods of the same description
 - (i) has caused material injury,
 - (i.1) has caused, is causing and is likely to cause material injury, or
 - (ii) would have caused material injury except for the fact that provisional duty was applied or an undertaking was accepted in respect of the goods, and
 - (b) that were released
 - (i) during the period commencing on the day the preliminary determination is made and ending on the day the Tribunal makes the order or finding referred to in paragraph (a), or
 - (ii) in any case where an undertaking accepted by the Deputy Minister with respect to the goods has been violated, during the period commencing on the day the undertaking is violated or the ninetieth day preceding the day notice of termination of the undertaking is given pursuant to paragraph 52(1)(f), whichever is later, and ending on the day that subsection 8(1) becomes applicable to the goods,

a duty as follows:

- (c) in the case of dumped goods, an anti-dumping duty in an amount equal to the margin of dumping of the goods, and
- (d) in the case of subsidized goods, a countervailing duty in an amount equal to the amount of the subsidy on the goods, but not exceeding, in the case of any goods to which subparagraph (b)(i) applies, the duty, if any, paid or payable in respect of the goods pursuant to section 8. S.C. 1988, c. 65, s. 25.
- 5. Anti-dumping duty.—There shall be levied, collected and paid on all dumped goods imported into Canada

- (a) in respect of which the Tribunal has made an order or finding, after the release of the goods, that
 - (i) either
 - (A) there has occurred a considerable importation of like goods that were dumped, which dumping has caused material injury or would have caused material injury except for the application of anti-dumping measures, or
 - (B) the importer of the goods was or should have been aware that the exporter was practising dumping and that the dumping would cause material injury, and
 - (ii) material injury has been caused by reason of the fact that the imported goods
 - (A) constitute a massive importation into Canada, or
 - (B) form part of a series of importations into Canada, which importations in the aggregate are massive and have occurred within a relatively short period of time.

and in order to prevent the recurrence of the material injury, it appears necessary to the Tribunal that duty be assessed on the imported goods, and

(b) that were released during the period of ninety days preceding the day on which the Deputy Minister made a preliminary determination of dumping in respect of the goods or goods of that description,

an anti-dumping duty in an amount equal to the margin of dumping of the imported goods.

- **6. Countervailing duty.**—Where any subsidy on subsidized goods is an export subsidy, there shall be levied, collected and paid on all such subsidized goods imported into Canada
 - (a) in respect of which the Tribunal has made an order or finding, after the release of the goods, that
 - (i) material injury has been caused by reason of the fact that the imported goods
 - (A) constitute a massive importation into Canada, or
 - (B) form part of a series of importations into Canada, which importations in the aggregate are massive and have occurred within a relatively short period of time, and
 - (ii) a countervailing duty should be imposed on the subsidized goods in order to prevent the recurrence of such material injury,
 - (b) that were released during the period of ninety days preceding the day on which the Deputy Minister made a preliminary determination of subsidizing in respect of the goods or goods of that description, and
 - (c) in respect of which the Deputy Minister has made a specification pursuant to clause 41(1)(a)(iv)(C).

a countervailing duty in an amount equal to such of the amount of the subsidy on the imported goods as is an export subsidy.

- 7. (1) Governor in Council may impose countervailing duty by order. The Governor in Council may order an investigation to determine the amount of the subsidy on any subsidized goods that are the product of a country specified in the order, and where
 - (a) the Deputy Minister has, by means of the investigation, determined that amount, and
 - (b) the Committee of Signatories established pursuant to Article 16 of the Subsidies and Countervailing Duties Agreement has authorized Canada to impose countervailing duties on the subsidized goods,

the Governor in Council may, on the recommendation of the Minister of Finance, by order impose a countervailing duty on any subsidized goods that are the product of that country and that are of the same description as the goods in respect of which the Deputy Minister has determined the amount of the subsidy and, where a countervailing duty is so imposed, there shall, subject to subsection (2), be levied, collected and paid on all such subsidized goods imported into Canada a countervailing duty in the amount specified in the order in respect of the goods.

(2) **Duty not to exceed amount of subsidy.**—Where subsidized goods on which a countervailing duty has been imposed pursuant to subsection (1) are imported into Canada and the amount of the subsidy on the imported goods is less than the amount of the duty so imposed, there shall be levied, collected and paid on the goods pursuant to this section a countervailing duty only in the amount of the subsidy on the goods.

Provisional Duty

- **8.** (1) **Imposition of provisional duty.**—Where the Deputy Minister makes a preliminary determination of dumping or subsidizing in an investigation under this Act, the importer of dumped or subsidized goods that are of the same description as any goods to which the preliminary determination applies and that are released during the period commencing on the day the preliminary determination is made and ending on the earlier of
 - (a) the day on which the Deputy Minister causes the investigation to be terminated pursuant to subsection 41(1) with respect to goods of that description, and
 - (b) the day on which the Tribunal makes an order or finding with respect to goods of that description,

shall, on demand of the Deputy Minister for payment of provisional duty on the imported goods,

- (c) pay or cause to be paid on the imported goods provisional duty in an amount not greater than the estimated margin of dumping of or the estimated amount of the subsidy on the imported goods, or
- (d) post or cause to be posted security in a prescribed form and in an amount or to a value not greater than the estimated margin of dumping of or the estimated amount of the subsidy on the imported goods,

at the option of the importer.

- (1.1) **Idem.**—Where an order or finding of the Tribunal under subsection 43(1), 76(4.1) respecting a review pursuant to subsection 76(2.1), or 91(3), other than an order or finding described in any of sections 3 to 6, is referred back to the Tribunal pursuant to an order under subsection 77.015(3) or (4) or 77.019(5), or under subsection 77.15(3) or (4) or 77.19(4), the importer of dumped or subsidized goods that are of the same description as any goods to which the order or finding applies and that are released during the period commencing on the day on which the preliminary determination is made and ending on the day on which the Tribunal makes an order or finding, on the referral back, with respect to goods of that description, shall, on demand of the Deputy Minister for payment of provisional duty on the imported goods, at the option of the importer,
 - (a) pay or cause to be paid on the imported goods provisional duty in an amount not greater than the estimated margin of dumping of, or the estimated amount of the subsidy on, the imported goods; or
 - (b) post or cause to be posted security in the prescribed form and in an amount or to a

value not greater than the estimated margin of dumping of, or the estimated amount of the subsidy on, the imported goods.

- (2) **Return of provisional duty.**—Any provisional duty paid or security posted pursuant to subsection (1) or (1.1) by or on behalf of an importer in respect of the importation of dumped or subsidized goods of any description shall
 - (a) be returned to the importer forthwith after
 - (i) the Deputy Minister causes the investigation to be terminated pursuant to subsection 41(1) with respect to goods of that description,
 - (ii) all proceedings respecting the dumping or subsidizing of goods of that description are terminated as described in section 47, or
 - (iii) the Tribunal makes an order or finding with respect to goods of that description if the order or finding is only to the effect that the dumping or subsidizing of those goods is likely to cause material injury; and
 - (b) except to the extent of any duty payable in respect of the imported goods, be returned to the importer forthwith after a determination is made in respect of the imported goods by a designated officer pursuant to such of paragraphs 55(c) to (e) as are applicable.
- (3) **Interest.**—Where any provisional duty is returned to an importer pursuant to subsection (2), the importer shall be paid interest thereon at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month between the time the duty was paid and the time it is returned.
- (4) Amounts under ten dollars,—Where interest owing under this section is less than ten dollars, no interest shall be paid. R.S.C. 1985, c. 1 (2nd Supp.), s. 198; S.C. 1988, c. 65, s. 26; S.C. 1993, c. 43, ss. 202, 203.

Payment of Duty During Court Proceedings and Proceedings under Part I.1 or Part II

- **9.** (1) **Duty ceases where order or finding set aside by court.** Where proceedings are commenced by an application for judicial review under the *Federal Court Act*, or an application under section 96.1 of this Act, to review and set aside an order or finding of the Tribunal pursuant to which duty is leviable, collectable and payable (in this section referred to as "payable") under this Act on goods imported into Canada that are of the same description as any goods to which the order or finding applies, duty continues, notwithstanding any order or decision that may be made or given in the course of the proceedings, to be so payable pursuant to the order or finding on imported goods of that description during the course of the proceedings and after they are finally disposed of, unless the final disposition of the proceedings results in the order or finding being set aside or being set aside in relation to particular goods, in which case
 - (a) duty ceases, on the final disposition of the proceedings, to be so payable on imported goods of that description or the same description as those particular goods, as the case may be; and
 - (b) for greater certainty, the order or finding shall, for the purposes of this Act, be deemed never to have been made by the Tribunal in respect of goods described in paragraph (a).
- (2) **Definition of "proceedings".** —In subsection (1), "proceedings", in relation to an application made to the Federal Court of Appeal, includes proceedings on any appeal from any decision of that Court on the application. S.C. 1988, c. 65, s. 27; S.C. 1990, c. 8, s. 69.
 - 9.01 (1) Duty ceases where order or finding rescinded pursuant to review. Where a

review is requested under Part I.1 of an order or finding of the Tribunal pursuant to which duty is leviable, collectable and payable (in this section referred to as "payable") under this Act on goods of a NAFTA country imported into Canada that are of the same description as any goods to which the order or finding applies, duty continues, notwithstanding any order or decision that may be made or given in the course of proceedings under that Part, to be so payable pursuant to the order or finding on imported goods of that description during the course of the proceedings and after they are finally disposed of, unless the final disposition of the proceedings results in the order or finding being rescinded or being rescinded in relation to particular goods, in which case

- (a) duty ceases, on the order or finding being so rescinded, to be so payable on imported goods of that description or the same description as those particular goods, as the case may be; and
- (b) for greater certainty, the order or finding shall, for the purposes of this Act, be deemed never to have been made by the Tribunal in respect of goods described in paragraph (a).
- (2) Suspension of s. 9.1.—The operation of section 9.1 is suspended during the period in which subsection (1) is in force. S.C. 1993, c. 44, s. 204.
- 9.1 Duty ceases where order or finding rescinded pursuant to review.—Where a review is requested under Part II of an order or finding of the Tribunal pursuant to which duty is leviable, collectable and payable (in this section referred to as "payable") under this Act on goods of the United States imported into Canada that are of the same description as any goods to which the order or finding applies, duty continues, notwithstanding any order or decision that may be made or given in the course of proceedings under that Part, to be so payable pursuant to the order or finding on imported goods of that description during the course of the proceedings and after they are finally disposed of, unless the final disposition of the proceedings results in the order or finding being rescinded or being rescinded in relation to particular goods, in which case
 - (a) duty ceases, on the order or finding being so rescinded, to be so payable on imported goods of that description or the same description as those particular goods, as the case may be; and
 - (b) for greater certainty, the order or finding shall, for the purposes of this Act, be deemed never to have been made by the Tribunal in respect of goods described in paragraph (a). S.C. 1988, c. 65, s. 28.
- 9.2 (1) Duty ceases where final determination set aside by court.—Where duty is leviable, collectable and payable (in this section referred to as "payable") under this Act pursuant to an order or finding of the Tribunal on goods imported into Canada and proceedings are commenced in the Federal Court of Appeal by an application under section 96.1 to review and set aside the final determination of the Deputy Minister under paragraph 41(1)(a) on which the order or finding is based, duty continues, notwithstanding any order or decision that may be made or given in the course of the proceedings, to be so payable pursuant to the order or finding on imported goods of the same description as those goods during the course of the proceedings and after they are finally disposed of, unless the final disposition of the proceedings results in the final determination being set aside or being set aside in relation to particular goods, or the Deputy Minister recommencing the investigation and terminating it under paragraph 41(1)(b), in which case
 - (a) duty ceases, on the final determination being so set aside or the investigation being so terminated, to be so payable on imported goods of that description or the same description as those particular goods, as the case may be; and

- (b) for greater certainty, the order or finding shall, for the purposes of this Act, be deemed never to have been made by the Tribunal in respect of goods described in paragraph (a).
- (2) **Definition of "proceedings".**—In subsection (1), "proceedings", in relation to an application made to the Federal Court of Appeal, includes proceedings on any appeal from any decision of that Court on the application. S.C. 1988, c. 65, s. 28.
- **9.21** (1) **Duty ceases where investigation terminated pursuant to review.** Where duty is leviable, collectable and payable (in this section referred to as "payable") under this Act pursuant to an order or finding of the Tribunal on goods of a NAFTA country imported into Canada and a review is requested under Part I.1 of the final determination of the Deputy Minister under paragraph 41(l)(a) on which the order or finding is based, duty continues, notwithstanding any order or decision that may be made or given in the course of proceedings under that Part, to be so payable pursuant to the order or finding on imported goods of the same description as those goods during the course of the proceedings and after they are finally disposed of, unless the final disposition of the proceedings results in the Deputy Minister recommencing the investigation and terminating it under paragraph 41(l)(b), in which case
 - (a) duty ceases, on the investigation being so terminated, to be so payable on imported goods of that description; and
 - (b) for greater certainty, the order or finding shall, for the purposes of this Act, be deemed never to have been made by the Tribunal in respect of imported goods of that description.
- (2) **Suspension of s. 9.3.**—The operation of section 9.3 is suspended during the period in which subsection (1) is in force. S.C. 1993, c. 44, s. 205.
- 9.3 Duty ceases where investigation terminated pursuant to review. Where duty is leviable, collectable and payable (in this section referred to as "payable") under this Act pursuant to an order or finding of the Tribunal on goods of the United States imported into Canada and a review is requested under Part II of the final determination of the Deputy Minister under paragraph 41(1)(a) on which the order or finding is based, duty continues, notwithstanding any order or decision that may be made or given in the course of proceedings under that Part, to be so payable pursuant to the order or finding on imported goods of the same description as those goods during the course of the proceedings and after they are finally disposed of, unless the final disposition of the proceedings results in the Deputy Minister recommencing the investigation and terminating it under paragraph 41(1)(b), in which case
 - (a) duty ceases, on the investigation being so terminated, to be so payable on imported goods of that description; and
 - (b) for greater certainty, the order or finding shall, for the purposes of this Act, be deemed never to have been made by the Tribunal in respect of imported goods of that description. S.C. 1988, c. 65, s. 28.
- **9.4** (1) **Duty reimposed on referral back.**—Where an order or finding of the Tribunal under subsection 76(4) rescinding an order or finding described in any of sections 3 to 6 is referred back to the Tribunal under subsection 77.015(3) or (4) or 77.019(5), or under subsection 77.15(3) or (4) or 77.19(4), the importer of dumped or subsidized goods that are of the same description as any goods to which the rescinded order or finding applied and that are released on or after the day on which the order of the panel referring the rescinding order or finding back is made, shall pay or cause to be paid duty on the imported goods as if the rescinded order or finding had not been rescinded.
 - (2) Cessation of duty. Duty that is payable under subsection (1) continues to be so

payable during the course of the proceedings of the Tribunal on the referral back and thereafter, unless the order or finding of the Tribunal on the referral back is

- (a) to confirm the rescinding order or finding, in which case
 - (i) the duty ceases, on the day on which the order or finding of the Tribunal on the referral back is made, to be so payable on imported goods, and
 - (ii) the duty paid under subsection (1) shall be returned to the importer forthwith after that day; or
- (b) to rescind the rescinding order or finding and make a new or other order or finding with respect to the goods to which the rescinded order or finding applied, in which case the duty paid under subsection (1) shall be returned to the importer forthwith after the day on which the order or finding of the Tribunal on the referral back is made, except to the extent of any duty payable by the importer as a consequence of the new or other order or finding.
- (3) Where Tribunal makes new order or finding.—Where the Tribunal rescinds a rescinding order or finding and makes a new or other order or finding as described in paragraph (2)(b), the new or other order or finding shall be deemed, for the purposes of this Act, to have been made on the day on which the order or finding so rescinded was made. S.C. 1988, c. 65, s. 28; S.C. 1993, c. 44, s. 206.

General Rules Relating to Payment of Duty

- 10. Where both anti-dumping duty and countervailing duty payable on goods.—Where both an anti-dumping duty and a countervailing duty are required by this Act to be levied, collected and paid on any goods imported into Canada and all or any portion of the margin of dumping of the goods is, in the opinion of the Deputy Minister, attributable to an export subsidy in respect of which a countervailing duty is required by any of sections 3, 4, 6 and 7 to be levied, collected and paid, the anti-dumping duty is, notwithstanding sections 3 to 5, leviable, collectable and payable under this Act in respect of the goods only as follows:
 - (a) where the whole of the margin of dumping of the goods is, in the opinion of the Deputy Minister, attributable to the export subsidy, no anti-dumping duty is leviable, collectable or payable on the imported goods; and
 - (b) where a portion only of the margin of dumping of the imported goods is, in the opinion of the Deputy Minister, attributable to the export subsidy, an anti-dumping duty is leviable, collectable and payable on the imported goods only in an amount equal to that portion of the margin of dumping of the goods that is not, in the opinion of the Deputy Minister, attributable to the export subsidy.
- 11. (1) When duty payable.—The importer in Canada of any goods imported into Canada in respect of which duty, other than provisional duty, is payable shall, on demand of the Deputy Minister and notwithstanding any security posted pursuant to paragraph 8(1) (d), pay or cause to be paid all such duties on the goods.
- (2) Interest.—Any person who fails to pay any amount owing under subsection (1) shall pay, in addition to the amount owing, interest at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month commencing thirty days after the Deputy Minister makes a demand under subsection (1) during which any amount remains outstanding, calculated on the amount outstanding.
- (3) Amounts under ten dollars.—Where interest owing under this section is less than ten dollars, no interest shall be paid. R.S.C. 1985, c. 1 (2nd Supp.), s. 199.

- 12. (1) Return of duty where order or finding set aside or rescinded.—Where, pursuant to an application for judicial review under the *Federal Court Act* or section 96.1 of this Act or a review under Part I.1 or II of this Act, an order or finding described in any of sections 3 to 6 is set aside or rescinded or is set aside or rescinded in relation to particular goods, and where all proceedings under this Act respecting the dumping or subsidizing of all or any of the goods to which the order or finding applies or all or any of those particular goods, as the case may be, are subsequently terminated as described in section 47, any duty paid under this Act pursuant to the order or finding by or on behalf of an importer on imported goods that are of the same description as goods with respect to which such proceedings are so terminated shall be returned to the importer forthwith after the proceedings are so terminated.
- (1.1) **Return of part of duty where order or finding set aside or rescinded.** Where, pursuant to an application under the *Federal Court Act* or section 96.1 of this Act or a review under Part I.1 or II of this Act, an order or finding described in any of sections 3 to 6 is set aside or rescinded or is set aside or rescinded in relation to particular goods and another such order or finding is made with respect to all or any of the goods to which the order or finding applies or all or any of those particular goods, as the case may be, any duty paid under this Act pursuant to the first-mentioned order or finding by or on behalf of an importer shall, except to the extent of any duty payable by the importer as a consequence of the other order or finding, be returned to the importer forthwith after the other order or finding is made.
- (2) **Return of duty.**—Where the Minister is satisfied that, because of a clerical or arithmetical error, an amount has been paid as duty in respect of goods that was not properly payable, the Minister shall return that amount to the importer or owner of the goods by or on whose behalf it was paid.
- (3) **Idem.**—Where, in relation to the importation of any goods and as a consequence of the operation of any provision of this Act, duty is paid or security posted by or on behalf of a person who, at the time the duty is paid or security posted, is considered by the Deputy Minister to be the importer in Canada of the goods and it is subsequently ruled by the Tribunal that the person was not the importer in Canada of the goods, the duty so paid or security so posted shall be returned to the person forthwith after the Tribunal's ruling is made. S.C. 1988, c. 65, s. 29; S.C. 1990, c. 8, s. 70; S.C. 1993, c. 44, s. 207.
- 13. Where Tribunal makes new order or finding.—Where, pursuant to subsection 91(3), the Tribunal rescinds an order or finding with respect to goods and makes another order or finding with respect to the goods,
 - (a) the other order or finding shall be deemed, for the purposes of this Act, to have been made on the date that the order or finding so rescinded was made; and
 - (b) any duty paid by or on behalf of any person as a consequence of the order or finding so rescinded shall, except to the extent of any duty payable by the person as a consequence of the other order or finding, be returned to the person forthwith after the other order or finding is in fact made.
- 13.1 (1) Interest on amount of duty returned.—Any person to whom any amount of duty paid is returned under section 9.4, 12 or 13 shall be paid, in addition to the amount returned, interest thereon at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month between the time the duty was paid and the time the amount is returned.
- (2) **Amounts under ten dollars.**—Where interest owing under this section is less than ten dollars, no interest shall be paid, R.S.C. 1985, c. 1 (2nd Supp.), s. 200; S.C. 1988, c. 65, s. 30.

Exemption from Application of Act

14. Exemption of goods from application of Act.—The Governor in Council may, on the recommendation of the Minister of Finance, make regulations exempting any goods or class of goods from the application of this Act.

NORMAL VALUE AND EXPORT PRICE

Normal Value

- **15.** Determination of normal value of goods.—Subject to sections 19 and 20, where goods are sold to an importer in Canada, the normal value of the goods is the price of like goods when they are sold by the exporter of the first mentioned goods
 - (a) to purchasers
 - (i) with whom the exporter is not associated at the time of the sale of the like goods, and
 - (ii) who are at the same or substantially the same trade level as the importer,
 - (b) in the same or substantially the same quantities as the sale of goods to the importer,
 - (c) in the ordinary course of trade for use in the country of export under competitive conditions,
 - (d) during such period of sixty days that ends in the interval commencing with the first day of the year preceding the date of the sale of the goods to the importer and ending on the fifty-ninth day after such date as is selected by the Deputy Minister or, where, in the opinion of the Deputy Minister, the nature of the trade in those goods or the fact that they are sold to the importer for future delivery requires that sales of like goods by the exporter during a period other than a period of sixty days that ends in that interval be taken into account, during such period of sixty days or longer
 - (i) that precedes the date of the sale of the goods to the importer, or
 - (ii) where the goods are sold to the importer for future delivery, that precedes the date of the sale of the goods to the importer or within the year that precedes the date of the delivery of the goods to the importer

as the Deputy Minister specifies for those goods or for goods of the class to which those goods belong, and

(e) at the place from which the goods were shipped directly to Canada or, if the goods have not been shipped to Canada, at the place from which the goods would be shipped directly to Canada under normal conditions of trade,

adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer and the like goods sold by the exporter.

- **16.** (1) **Rules applied in determining normal value.**—In the application of section 15 in the case of any goods,
 - (a) if there was not, in the opinion of the Deputy Minister, such a number of sales of like goods made by the exporter at the place described in paragraph 15(e) as to permit a proper comparison with the sale of the goods to the importer in Canada, but sales of like goods were made by the exporter at one other place or several other places in the country of export, there shall, for the purpose of making that comparison, be included with sales of

like goods made by the exporter at the place described in paragraph 15(e) sales of like goods made by the exporter at that one other place or at the nearest of the several other places to the place described in paragraph 15(e), as the case may be;

- (b) if there was not, in the opinion of the Deputy Minister, such a number of sales of like goods made by the exporter to purchasers described in subparagraph 15(a)(i) who are at the same or substantially the same trade level as the importer in Canada as to permit a proper comparison with the sale of goods to the importer, but there was such a number of sales of like goods made to purchasers described in subparagraph 15(a)(i) who are at the trade level nearest and subsequent to that of the importer, there shall be substituted for the purchasers described in paragraph 15(a) purchasers described in subparagraph 15(a)(i) who are at the trade level nearest and subsequent to that of the importer;
- (c) if by reason of the fact that
 - (i) the sales of like goods made by the exporter were solely or primarily for export, or
 - (ii) the sales of like goods made by the exporter during the period that is applicable by reason of paragraph 15(d) were solely or primarily to purchasers who at any time during that period were not purchasers described in subparagraph 15(a)(i).

there was not, in the opinion of the Deputy Minister, such a number of sales of like goods made by the exporter as to permit a proper comparison with the sale of the goods to the importer in Canada, but there were sales of like goods for use in the country of export by other vendors, such one or more of any of those vendors that the Deputy Minister may specify shall be deemed to be the exporter for the purpose of determining the normal value of the goods sold to the importer in Canada;

- (d) if the quantity of goods sold to the importer in Canada is larger than the largest quantity of like goods sold by the exporter for use in the country of export, the sales of like goods shall be those sales of like goods that are in the largest quantity sold by the exporter for such use; and
- (e) if the quantity of goods sold to the importer in Canada is smaller than the smallest quantity of like goods sold by the exporter for use in the country of export, the sales of like goods shall be those sales of like goods that are in the smallest quantity sold by the exporter for such use.
- (2) **Idem.**—In determining the normal value of any goods under section 15, there shall not be taken into account
 - (a) any sale of like goods for use in the country of export by a vendor to a purchaser if the vendor did not, at the same or substantially the same time, sell like goods in the ordinary course of trade to other persons in the country of export at the same trade level as, and not associated with, the purchaser; and
 - (b) any sale of like goods that, in the opinion of the Deputy Minister, forms part of a series of sales of goods at prices that do not provide for recovery in the normal course of trade and within a reasonable period of time of the cost of production of the goods, the administration and selling costs with respect to the goods and an amount for profit.
- 17. Price of like goods.—In determining the normal value of any goods under section 15, the price of like goods when sold by the exporter to purchasers during the period referred to in paragraph 15(d) is
 - (a) the price at which the preponderance of sales of like goods that comply with all the terms and conditions referred to in section 15 or that are applicable by virtue of subsection 16(1) was made by the exporter to purchasers throughout the period; and

- (b) when there is no such preponderance of sales at a single price throughout the period, the weighted average of the prices at which like goods were so sold by the exporter to purchasers throughout the period.
- **18. Goods deemed to be like goods.**—Where goods imported into Canada and goods sold for use in the country of export are like goods except only that the goods sold for such use have applied to them a trade-mark, as defined in the *Trade-marks Act*, that is not applied to the goods imported into Canada, and goods like the goods imported are not sold for use in the country of export, the goods imported and the goods sold for such use shall be deemed to be like goods for the purposes of this section if, in the opinion of the Deputy Minister,
 - (a) the goods are being imported into Canada without that trade-mark applied to them in order to avoid the operation of section 15; and
 - (b) it is probable that there will be applied to the goods, subsequent to their importation into Canada, that trade-mark or any other mark so closely resembling that trade-mark that it is likely to be taken therefor.
- 19. Where normal value cannot be determined under section 15.—Subject to section 20, where the normal value of any goods cannot be determined under section 15 by reason that there was not, in the opinion of the Deputy Minister, such a number of sales of like goods that comply with all the terms and conditions referred to in that section or that are applicable by virtue of subsection 16(1) as to permit a proper comparison with the sale of the goods to the importer, the normal value of the goods shall be determined, at the option of the Deputy Minister in any case or class of cases, as
 - (a) such price of like goods when sold by the exporter to importers in any country other than Canada during the period referred to in paragraph 15(d) as, in the opinion of the Deputy Minister, fairly reflects the market value of the goods at the time of the sale of the goods to the importer in Canada, adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer in Canada and the like goods sold by the exporter to importers in the country other than Canada; or
 - (b) the aggregate of
 - (i) the cost of production of the goods,
 - (ii) an amount for administrative, selling and all other costs, and
 - (iii) an amount for profits.
- **20.** Normal value where export monopoly.—Where goods sold to an importer in Canada are shipped directly to Canada from a country where, in the opinion of the Deputy Minister,
 - (a) the government of that country has a monopoly or substantial monopoly of its export trade, and
 - (b) domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market,

the normal value of the goods is

- (c) where like goods are sold by producers in any country other than Canada designated by the Deputy Minister for use in that country,
 - (i) the price of the like goods at the time of the sale of the goods to the importer in Canada, adjusted in the prescribed manner and circumstances to reflect the differences

in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer in Canada and the like goods sold by producers in the country other than Canada designated by the Deputy Minister for use in that country, or

- (ii) the aggregate of
 - (A) the cost of production of the like goods,
 - (B) an amount for administrative, selling and all other costs, and
 - (C) an amount for profits,

whichever of the price or aggregate the Deputy Minister designates for any case or class of cases; or

- (d) where, in the opinion of the Deputy Minister, sufficient information has not been furnished or is not available to enable the normal value of the goods to be determined as provided in paragraph (c), the price of like goods
 - (i) produced in any country designated by the Deputy Minister, other than Canada or the country from which the goods were shipped directly to Canada, and
 - (ii) imported into Canada and sold by the importer thereof in the condition in which they were imported to a person with whom, at the time of the sale, the importer was not associated,

such price to be adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer and the imported like goods in relation to their sale by the importer thereof.

- 21. (1) Credit sales of like goods.—Where any sale of like goods referred to an section 17, paragraph 19(a), subparagraph 20(c)(i) or paragraph 20(d) was made on credit terms other than cash discounts, the price for which the like goods were sold is deemed, for the purpose of that provision, to be an amount equal to the quotient obtained when
 - (a) the aggregate of the present value of every payment of principal or interest, or of principal and interest, provided for by any agreement entered into with respect to the sale, determined
 - (i) as of the time of the sale, and
 - (ii) by reference to a discount rate equal to
 - (A) the interest rate prevailing in the country in which the goods were sold, at the time of the sale, for commercial loans available in that country in the currency in which the payments are expressed in the agreement and on terms, other than the interest rate, comparable to the credit terms on which the sale of the like goods was made, or
 - (B) where it is not possible to ascertain the interest rate referred to in clause (A) or there is no such interest rate, the interest rate selected as provided for by regulations made pursuant to paragraph 97(i),

is divided by

- (b) the number or quantity of the like goods sold, so as to arrive at a unit price for the like goods sold.
- (2) Where agreement relates to several goods. For the purpose of paragraph (1)(a), where an agreement with respect to the sale of like goods also relates to the sale of other goods.

only such portion of the present value of any payment of principal or interest, or of principal and interest, provided for by the agreement as is reasonably attributable to the like goods shall be included in determining the aggregate referred to in that paragraph.

- 22. Purchasers to be regarded as one.—For the purpose of section 15, where two or more purchasers are persons associated with each other during the period that, by reason of the operation of paragraph 15(d), is relevant for the purpose of that section, those purchasers shall be regarded as a single purchaser.
- 23. Where exporter provides benefit on resale in country of export.—Where, by reason of any provision of section 17, 19 or 20, the normal value of goods sold to an importer in Canada is required to be determined by reference to the price of like goods sold by the exporter of the first mentioned goods and the exporter agrees with persons who purchase the like goods from him in the country of export of the goods sold to the importer in Canada to provide, directly or indirectly, to persons who purchase the like goods in the country of export
 - (a) on resale from the persons with whom such an agreement is made, or
 - (b) from any person on any subsequent resale,

any benefit by way of rebate, service, other goods or otherwise, the normal value for the purposes of this Act of the goods sold to the importer in Canada is the normal value as determined pursuant to that provision minus an amount to reflect the value of the benefit to persons who purchase the like goods on resale. 1984, c. 25, s. 23.

Export Price

- **24. Determination of export price of goods.**—The export price of goods sold to an importer in Canada, notwithstanding any invoice or affidavit to the contrary, is an amount equal to the lesser of
 - (a) the exporter's sale price for the goods, adjusted by deducting therefrom
 - (i) the costs, charges and expenses incurred in preparing the goods for shipment to Canada that are additional to those costs, charges and expenses generally incurred on sales of like goods for use in the country of export,
 - (ii) any duty or tax imposed on the goods by or pursuant to a law of Canada or of a province, to the extent that the duty or tax is paid by or on behalf or at the request of the exporter, and
 - (iii) all other costs, charges and expenses resulting from the exportation of the goods, or arising from their shipment, from the place described in paragraph 15(e) or the place substituted therefor by virtue of paragraph 16(1)(a), and
 - (b) the price at which the importer has purchased or agreed to purchase the goods, adjusted by deducting therefrom all costs, charges, expenses, duties and taxes described in subparagraphs (a)(i) to (iii).
- **25.** Special rules to determine export price.—Where, in respect of goods sold to an importer in Canada,
 - (a) there is no exporter's sale price or no price at which the importer in Canada has purchased or agreed to purchase the goods, or
 - (b) the Deputy Minister is of the opinion that the export price, as determined under section 24, is unreliable
 - (i) by reason that the sale of the goods for export to Canada was a sale between associated persons, or

- (ii) by reason of a compensatory arrangement, made between any two or more of the following, namely, the manufacturer, producer, vendor, exporter, importer in Canada and any other person, that directly or indirectly affects or relates to
 - (A) the price of the goods,
 - (B) the sale of the goods,
 - (C) the net return to the manufacturer, producer, vendor or exporter of the goods, or
 - (D) the net cost to the importer of the goods,

the export price of the goods is

- (c) if the goods were sold by the importer in the condition in which they were or are to be imported to a person with whom, at the time of the sale, he was not associated, the price for which the goods were so sold less an amount equal to the aggregate of
 - (i) all costs, including duties imposed by virtue of this Act or the Customs Tariff and taxes,
 - (A) incurred on or after the importation of the goods and on or before their sale by the importer, or
 - (B) resulting from their sale by the importer,
 - (ii) an amount for profit by the importer on the sale,
 - (iii) the costs, charges and expenses incurred by the exporter, importer or any other person in preparing the goods for shipment to Canada that are additional to those costs, charges and expenses generally incurred on sales of like goods for use in the country of export, and
 - (iv) all other costs, charges and expenses incurred by the exporter, importer or any other person resulting from the exportation of the imported goods, or arising from their shipment, from the place described in paragraph 15(e) or the place substituted therefor by virtue of paragraph 16(1)(a),
- (d) if the goods are imported for the purpose of assembly, packaging or other further manufacture in Canada or for incorporation into other goods in the course of manufacture or production in Canada, the price of the goods as assembled, packaged or otherwise further manufactured, or of the goods into which the imported goods have been incorporated, when sold to a person with whom the vendor is not associated at the time of the sale. less an amount equal to the aggregate of
 - (i) an amount for profit on the sale of the assembled,

packaged or otherwise further manufactured goods or of the goods into which the imported goods have been incorporated,

- (ii) the administrative, selling and all other costs incurred in selling the goods described in subparagraph (i),
- (iii) the costs that are attributable or in any manner related to the assembly, packaging or other further manufacture or to the manufacture or production of the goods into which the imported goods have been incorporated,
- (iv) the costs, charges and expenses incurred by the exporter, importer or any other person in preparing the imported goods for shipment to Canada that are additional to those costs, charges and expenses generally incurred on sales of like goods for use in the country of export, and

- (v) all other costs, charges and expenses, including duties imposed by virtue of this Act or the *Customs Tariff* and taxes,
 - (A) resulting from the exportation of the imported goods, or arising from their shipment, from the place described in paragraph 15(e) or the place substituted therefor by virtue of paragraph 16(1)(a) that are incurred by the exporter, importer or any other person, or
 - (B) incurred on or after the importation of the imported goods and on or before the sale of the goods as assembled, packaged or otherwise further manufactured or of the goods into which the imported goods have been incorporated, or
- (e) in any cases not provided for by paragraphs (c) and (d), the price determined in such manner as the Minister specifies.
- 26. Export price where agreement affects anti-dumping duty.—Where the manufacturer, producer, vendor or exporter of goods sold to an importer in Canada undertakes, directly or indirectly in any manner whatever, to indemnify, pay on behalf of or reimburse the importer or purchaser in Canada of the goods for all or any part of the anti-dumping duty that may be levied on the goods,
 - (a) the indemnity, payment or reimbursement is deemed not to be a compensatory arrangement referred to in subparagraph 25(b)(ii); and
 - (b) the export price of the goods is the export price thereof as otherwise determined under this Act minus the amount of the indemnity, payment or reimbursement.
- 27. (1) Credit sales of goods sold to importer in Canada.—For the purposes of sections 24 and 25, where any sale of goods referred to in those sections was made on credit terms other than cash discounts, the sale price for the goods is deemed to be an amount equal to the quotient obtained when
 - (a) the aggregate of the present value of every payment of principal or interest, or of principal and interest, provided for by any agreement entered into with respect to the sale, determined
 - (i) as of the time of the sale, and
 - (ii) by reference to a discount rate equal to
 - (A) the interest rate prevailing, at the time of the sale, in the country in which the vendor is located for commercial loans available in that country in the currency in which the payments are expressed in the agreement and on terms, other than the interest rate, comparable to the credit terms on which the sale of the goods was made, or
 - (B) where it is not possible to ascertain the interest rate referred to in clause (A) or there is no such interest rate, the interest rate selected as provided for by regulations made pursuant to paragraph 97(j),

is divided by

- (b) the number or quantity of the goods sold, so as to arrive at a unit price for the goods sold.
- (2) Where agreement relates to several goods.—For the purpose of paragraph (1)(a), where an agreement with respect to the sale of goods referred to in section 24 or 25 also relates to the sale of other goods, only such portion of the present value of any payment of principal or interest, or of principal and interest, provided for by the agreement as is reasonably attributable

to the goods referred to in section 24 or 25, as the case may be, shall be included in determining the aggregate referred to in that paragraph.

- **28.** Where exporter provides benefit on resale in Canada.—For the purposes of sections 24 and 25, where the exporter of goods sold to an importer in Canada agrees with the importer to provide, directly or indirectly, to persons who purchase the goods in Canada
 - (a) on resale from the importer, or
 - (b) from any person on any subsequent resale,

any benefit by way of rebate, service, other goods or otherwise, the export price of the goods is the export price as otherwise determined under this Act, after subtracting therefrom any amount that is required to be subtracted under section 26, minus an amount to reflect the value of the benefit to persons who purchase the goods on resale.

Normal Value and Export Price

- 29. (1) Normal value and export price where information not available.—Where, in the opinion of the Deputy Minister, sufficient information has not been furnished or is not available to enable the determination of normal value or export price as provided in sections 15 to 28, the normal value or export price, as the case may be, shall be determined in such manner as the Minister specifies.
- (2) Consignment shipments.—Where goods are or are to be shipped to Canada on consignment and there is no known purchaser in Canada of the goods, the normal value and export price of the goods shall be determined in such manner as the Minister specifies.
- **30.** (1) Normal value and export price where goods exported to Canada through another country.—Where goods are exported to Canada from one country but pass in transit through another country, the normal value and export price of the goods shall, subject to such terms and conditions as to shipment, documentation, warehousing, transhipment or the like as are prescribed, be determined as if the goods were shipped directly to Canada from the first mentioned country.
- (2) Normal value and export price where goods shipped indirectly to Canada.—Where any goods
 - (a) are or are to be shipped indirectly to Canada from the country of origin through one or more other countries, and
 - (b) would, but for this section, have a normal value as computed under sections 15 to 23 that is less than the normal value would be if the country of export were the country of origin,

the normal value and export price of the goods shall, notwithstanding any other provision of this Act, be determined as if the goods were or were to be shipped directly to Canada from the country of origin.

PROCEDURE IN DUMPING AND SUBSIDY INVESTIGATIONS

Commencement of Investigation

31. (1) **Initiation of investigation.**—The Deputy Minister shall cause an investigation to be initiated respecting the dumping or subsidizing of any goods forthwith on his own initiative, or, where he receives a written complaint respecting the dumping or subsidizing of the goods.

within thirty days after the date on which written notice is given by or on behalf of the Deputy Minister to the complainant that the complaint is properly documented, if he is of the opinion

- (a) that there is evidence that the goods have been or are being dumped or subsidized; and
- (b) that the evidence discloses a reasonable indication that the dumping or subsidizing referred to in paragraph (a) has caused, is causing or is likely to cause material injury or has caused or is causing retardation.
- (2) **Idem.**—The Deputy Minister shall, on receipt of a notice in writing from the Tribunal pursuant to section 46 respecting the dumping or subsidizing of any goods, cause an investigation to be initiated respecting the dumping or subsidizing of any goods described in the notice.
- (3) **Idem.**—Where a reference is made to the Tribunal pursuant to subsection 33(2) and the Tribunal advises that the evidence discloses a reasonable indication that the dumping or subsidizing of the goods that are the subject of the reference has caused, is causing or is likely to cause material injury or has caused or is causing retardation, the Deputy Minister shall initiate an investigation respecting the dumping or subsidizing of the goods forthwith after receipt of the advice.
- 32. (1) Where Deputy Minister receives a complaint.—Where the Deputy Minister receives a written complaint respecting the dumping or subsidizing of goods, he shall, within twenty-one days after the receipt thereof,
 - (a) where the complaint is properly documented, cause the complainant, and, in the case of subsidized goods, the government of the country of export, to be informed in writing that the complaint was received and that it is properly documented; or
 - (b) where the complaint is not properly documented, cause the complainant to be informed that the complaint was received and that additional information and material is needed in order for the complaint to be properly documented.
- (2) Additional information and material.—For the purposes of subsection (1), where the Deputy Minister receives from a complainant additional written information or material in relation to a complainant to be informed pursuant to paragraph (1)(b), the Deputy Minister shall, unless, before the receipt of the additional information or material, he has caused the complainant to be informed in writing pursuant to paragraph (1)(a) that the complaint is properly documented, be deemed to have received, on the day that he received the additional written information or material, a complaint respecting the dumping or subsidizing of goods composed of the complaint with respect to which he has caused the complainant to be so informed pursuant to paragraph (1)(b) and the additional information or material.
- (3) **Deemed complaint.**—Where a written complaint filed with the Tribunal pursuant to subsection 23(1) of the *Canadian International Trade Tribunal Act* is referred to the Deputy Minister pursuant to subsection 26(5) or 28(1) of that Act, the Deputy Minister shall be deemed to have received a written complaint described in subsection (1). R.S.C. 1985, c. 47 (4th Supp.), s. 52.
- 33. (1) Where Deputy Minister decides not to initiate investigation.—Where, after receipt of a properly documented written complaint respecting the dumping or subsidizing of goods, the Deputy Minister decides, with respect to some or all of the goods specified in the complaint, not to cause an investigation to be initiated, he shall cause a written notice of his decision, setting out the reasons therefor, to be sent to the complainant and, in the case of subsidized goods, to the government of the country of export.

- (2) **Reference to Tribunal.**—Where, after receipt of a properly documented written complaint respecting the dumping or subsidizing of goods, the Deputy Minister decides, with respect to some or all of the goods specified in the complaint, not to cause an investigation to be initiated by reason only that in his opinion the evidence does not disclose a reasonable indication that the dumping or subsidizing of the goods in respect of which he has so decided has caused, is causing or is likely to cause material injury or has caused or is causing retardation.
 - (a) the Deputy Minister may, on the date of the notice referred to in subsection (1), or
 - (b) the complainant may, within thirty days after the date of the notice referred to in subsection (1),

refer to the Tribunal the question whether the evidence discloses a reasonable indication that the dumping or subsidizing of the goods in respect of which the Deputy Minister has so decided has caused, is causing or is likely to cause material injury or has caused or is causing retardation.

- **34.** Notice of investigation and referral to Tribunal. Where the Deputy Minister causes an investigation to be initiated respecting the dumping or subsidizing of goods.
 - (a) in the case of an investigation initiated pursuant to any provision of this Act other than section 7, the Deputy Minister shall cause notice of the investigation
 - (i) to be given to the exporter, the importer, the government of the country of export, the complainant, if any, and such other persons as may be prescribed, and
 - (ii) to be published in the Canada Gazette; and
 - (b) in the case of an investigation initiated pursuant to subsection 31(1), the Deputy Minister may, on the date of the notice given to the complainant pursuant to paragraph (a), or any person or government that was given notice pursuant to paragraph (a) may, within thirty days from the date of the notice, refer to the Tribunal the question whether the evidence discloses a reasonable indication that the dumping or subsidizing of any goods in respect of which the Deputy Minister has caused the investigation to be initiated has caused, is causing or is likely to cause material injury or has caused or is causing retardation.
- **35.** (1) **Termination of investigation.** Where, at any time before making a preliminary determination in an investigation respecting the dumping or subsidizing of goods.
 - (a) the Deputy Minister is satisfied in respect of some or all of those goods that
 - (i) there is insufficient evidence of dumping or subsidizing to justify proceeding with the investigation in relation thereto, or
 - (ii) the margin of dumping of or the amount of the subsidy on the goods or the actual or potential volume of dumped or subsidized goods is negligible, or
 - (b) in the case of an investigation initiated pursuant to subsection 31(1) with respect to which a reference has not been made to the Tribunal pursuant to paragraph 34(b), the Deputy Minister comes to the conclusion in respect of some or all of those goods that the evidence does not disclose a reasonable indication that the dumping or subsidizing thereof has caused, is causing or is likely to cause material injury or has caused or is causing retardation, the Deputy Minister shall, subject to subsections (2) and (3).
 - (c) cause the investigation to be terminated with respect to the goods in respect of which he is so satisfied or has come to that conclusion, and

- (d) cause notice of the termination to be given and published as provided in paragraph 34(a).
- (2) **Notice and reference to Tribunal prior to termination.**—Where, in the case of an investigation described in paragraph (1)(b) respecting the dumping or subsidizing of goods, the Deputy Minister comes to the conclusion referred to in that paragraph in respect of some or all of those goods,
 - (a) the Deputy Minister shall cause notice of his conclusion to be given and published as provided in paragraph 34(a); and
 - (b) the Deputy Minister may, on the date of the notice given to the complainant pursuant to paragraph (a), or any person or government that was given notice pursuant to paragraph
 - (a) may, within thirty days from the date of the notice, refer to the Tribunal the question whether the evidence discloses a reasonable indication that the dumping or subsidizing of the goods in respect of which the Deputy Minister has come to that conclusion has caused, is causing or is likely to cause material injury or has caused or is causing retardation.
- (3) **Limitation on termination.**—Where notice is given pursuant to paragraph (2)(a) in an investigation, the Deputy Minister may not terminate the investigation with respect to the goods to which the notice relates by reason only that he has come to the conclusion referred to in paragraph (1)(b) in respect of those goods,
 - (a) where no reference is made to the Tribunal pursuant to paragraph (2)(b) within the thirty days referred to in that paragraph, until the thirty days have expired; or
 - (b) where a reference is made to the Tribunal, unless and until the Tribunal advises that in its opinion the evidence does not disclose a reasonable indication that the dumping or subsidizing of the goods has caused, is causing or is likely to cause material injury or has caused or is causing retardation.
- **36. Termination of investigation.**—Where a reference is made to the Tribunal pursuant to paragraph 34(b) and the Tribunal advises with respect to any of the goods that are the subject of the reference that the evidence does not disclose a reasonable indication that the dumping or subsidizing of those goods has caused, is causing or is likely to cause material injury or has caused or is causing retardation, the Deputy Minister shall terminate the investigation in respect of those goods forthwith after receipt of the advice and shall cause notice of the termination to be given and published as provided in paragraph 34(a).
- **37. Tribunal to give advice.**—Where a reference is made to the Tribunal pursuant to section 33, 34 or 35 on any question in relation to any matter before the Deputy Minister,
 - (a) the Deputy Minister shall forthwith provide the Tribunal with such information and material with respect to the matter as may be required under the rules of the Tribunal; and
 - (b) the Tribunal shall render its advice on the question
 - (i) without holding any hearings thereon,
 - (ii) on the basis of the information that was before the Deputy Minister when he reached his decision or conclusion on that question, and
 - (iii) forthwith after the date on which the reference is made to it and, in any event, not later than thirty days after that date.

Preliminary Determination

38. (1) **Preliminary determination of dumping or subsidizing.**—Subject to sections 39 and 40, within ninety days after the initiation of an investigation respecting the dumping or

subsidizing of goods, the Deputy Minister shall make a preliminary determination of dumping or subsidizing with respect to the goods in respect of which the investigation has not been terminated pursuant to section 35 or 36 after estimating and specifying, in relation to each importer of goods in respect of which the investigation is made, as follows:

- (a) in the case of dumped goods,
 - (i) estimating the margin of dumping of the goods to which the preliminary determination applies, using the information available to him at the time the estimate is made, and
 - (ii) specifying the goods to which the preliminary determination applies;
- (b) in the case of subsidized goods,
 - (i) estimating the amount of the subsidy on the goods to which the preliminary determination applies, using the information available to him at the time the estimate is made.
 - (ii) specifying the goods to which the preliminary determination applies, and
 - (iii) subject to subsection (2), where the whole or any part of the subsidy on the goods to which the preliminary determination applies is an export subsidy, specifying that there is an export subsidy on the goods and estimating the amount of the export subsidy thereon; and
- (c) in the case of dumped or subsidized goods, specifying the name of the person he believes, on the information available to him at the time he makes the estimate referred to in paragraph (a)(i) or (b)(i), as the case may be, is the importer in Canada of the goods.
- (2) Exception.—The Deputy Minister shall not specify or estimate anything pursuant to subparagraph (1)(b)(iii) where he is of the opinion that, having regard to the country that is providing the export subsidy, the nature of the goods on which there is an export subsidy and the circumstances under which the export subsidy is provided, provision of the export subsidy in relation to those goods is not inconsistent with that country's obligations under the international agreement known as the General Agreement on Tariffs and Trade.
- (3) **Notice of preliminary determination.**—Where the Deputy Minister makes a preliminary determination of dumping or subsidizing in respect of goods, he shall
 - (a) cause notice of the determination to be given and published as provided in paragraph 34(a); and
 - (b) cause to be filed with the Secretary written notice of the determination, stating the reasons therefor, together with such other material relating to the determination as may be required under the rules of the Tribunal.
- **39.** (1) **Time extended.**—Subject to section 40, where, in any investigation respecting the dumping or subsidizing of goods, the Deputy Minister, before the expiration of the ninety days referred to in subsection 38(1), causes written notice to be given to the persons and the government referred to in paragraph 34(a) that by reason of
 - (a) the complexity or novelty of the issues presented by the investigation.
 - (b) the variety of goods or number of persons involved in the investigation.
 - (c) the difficulty of obtaining satisfactory evidence in the investigation, or
 - (d) any other circumstance specified in the notice that, in the opinion of the Deputy Minister, makes it unusually difficult for him to decide within those ninety days whether

to terminate the investigation with respect to some or all of the goods, proceed in accordance with subsection 38(1) or accept an undertaking or undertakings,

the decision referred to in paragraph (d) will not be made within those ninety days, the period of ninety days referred to in section 38 is thereupon extended to one hundred and thirty-five days.

- (2) **Notice of time extension.**—Where the Deputy Minister causes notice to be given pursuant to subsection (1), he shall cause a notice to the same effect to be published in the Canada Gazette forthwith.
- **40.** Days not counted.—Where, in any investigation respecting the dumping or subsidizing of goods, notice is given and published pursuant to paragraph 35(2)(a), there shall not be counted as one of the ninety days referred to in section 38 or as one of the one hundred and thirty-five days referred to in subsection 39(1)
 - (a) in any case where the question referred to in that paragraph is not referred to the Tribunal, any of the thirty days referred to in paragraph 35(2)(b); or
 - (b) in any other case, any day in the period commencing on the day following the date of the notice given pursuant to paragraph 35(2)(a) and ending on the day on which the Tribunal renders its advice on the question referred to in paragraph 35(2)(b).

Final Determination

- **41.** (1) **Final determination or termination.**—Within ninety days after making, in any investigation, a preliminary determination of dumping or subsidizing in respect of goods, the Deputy Minister shall
 - (a) where, on the evidence available to him, he is satisfied, in relation to each importer of goods in respect of which the investigation is made,
 - (i) that the goods have been or are being dumped or subsidized, and
 - (ii) that neither the margin of dumping of or the amount of the subsidy on the goods nor the actual or potential volume of dumped or subsidized goods is negligible,

make a final determination of dumping or subsidizing with respect to the goods after specifying, in relation to each such importer, as follows:

- (iii) in the case of dumped goods, specifying the goods to which the determination applies and the margin of dumping of the goods, and
- (iv) in the case of subsidized goods,
 - (A) specifying the goods to which the determination applies,
 - (B) specifying the amount of the subsidy on the goods, and
 - (C) subject to subsection (2), where the whole or any part of the subsidy on the goods is an export subsidy, specifying the amount of the export subsidy on the goods; or
- (b) where, on the evidence available to him, there is no importer in Canada described in paragraph (a) with respect to whom he is satisfied in accordance with that paragraph, cause the investigation to be terminated with respect to the goods.
- (2) **Exception.**—The Deputy Minister shall not specify anything pursuant to clause (1)(a)(iv)(C) where he is of the opinion that, having regard to the country that is providing the export subsidy, the nature of the goods and the circumstances under which the export subsidy is provided, provision of the export subsidy in relation to those goods is not inconsistent with that

country's obligations under the international agreement known as the General Agreement on Tariffs and Trade.

- (3) **Notice of final determination.**—Where the Deputy Minister makes a final determination of dumping or subsidizing in respect of goods, he shall cause notice that he has made the determination to be
 - (a) given and published as provided in paragraph 34(a); and
 - (b) filed with the Secretary in writing, stating the reasons therefor, together with such other material relating to the determination as may be required under the rules of the Tribunal.
- (4) Notice of termination. —Where the Deputy Minister causes an investigation respecting the dumping or subsidizing of any goods to be terminated pursuant to subsection (1) in respect of those goods, he shall cause notice of the termination to be
 - (a) given and published as provided in paragraph 34(a); and
 - (b) given in writing to the Secretary.
- **41.1** (1) Action on final determination or decision referred back by Court. Where a final determination under paragraph 41(1)(a) or a decision under paragraph 41(1)(b) is set aside and the matter referred back to the Deputy Minister on an application under section 96.1, the Deputy Minister shall
 - (a) reconsider the matter and make a new final determination or decision; and
 - (b) cause notice of the action taken pursuant to paragraph (a) to be given and published as provided in paragraph 34(a) and to be given in writing to the Secretary.
- (2) Action on final determination or decision referred back by panel. Where a final determination under paragraph 41(1)(a) or a decision under paragraph 41(1)(b) is referred back to the Deputy Minister under subsection 77.015(3) or (4) or 77.019(5), or under subsection 77.15(3) or (4) or 77.19(4), the Deputy Minister shall
 - (a) reconsider the final determination or decision and confirm or rescind it or, in the case of a final determination, vary it; and
 - (b) cause notice of the action taken pursuant to paragraph (a) to be given and published as provided in paragraph 34(a) and to be given in writing to the Secretary and the Canadian Secretary.
- (3) Final determination.—Where the Deputy Minister reconsiders a matter involving a final determination pursuant to subsection (1) or reconsiders and resemds a final determination pursuant to subsection (2), section 41 shall again apply in respect of the goods to which the final determination applied as if that section had not previously applied in respect of those goods, except that the action that the Deputy Minister is required by that section to take shall, notwithstanding anything therein, be taken by the Deputy Minister within such period as is specified by the panel that made the order or the Federal Court of Appeal, as the case may be, or, in the case of the Federal Court of Appeal, within ninety days after the Court gives its ruling, if it did not specify a period.
- (4) **Decision to terminate.**—Where the Deputy Minister reconsiders a matter involving a decision pursuant to subsection (1) or reconsiders and rescinds a decision pursuant to subsection (2),
 - (a) the Deputy Minister shall be deemed to have made, on the day on which the order referring the matter or decision back to the Deputy Minister was made, a preliminary

determination of dumping or subsidizing in respect of the goods that were the subject of the investigation that was terminated;

- (b) the Deputy Minister shall resume the investigation that was terminated;
- (c) section 41 shall again apply as described in subsection (3); and
- (d) sections 42 and 43 shall again apply in respect of the goods to which the decision relates as if those sections had not previously applied in respect of those goods, except that the action that the Tribunal is required by those sections to take shall, notwithstanding anything therein, be taken by the Tribunal within one hundred and twenty days after the day on which the order referring the decision back to the Deputy Minister was made. S.C. 1988, c. 65, s. 31; S.C. 1993, c. 44, s. 208.

INQUIRIES BY TRIBUNAL

- **42.** (1) **Tribunal to make inquiry.**—The Tribunal, forthwith after receipt by the Secretary pursuant to subsection 38(3) of a notice of a preliminary determination of dumping or subsidizing in respect of goods, shall make inquiry with respect to such of the following matters as is appropriate in the circumstances:
 - (a) in the case of any goods to which the preliminary determination applies, as to whether the dumping or subsidizing of the goods
 - (i) has caused, is causing or is likely to cause material injury or has caused or is causing retardation, or
 - (ii) would have caused material injury or retardation except for the fact that provisional duty was imposed in respect of the goods;
 - (b) in the case of any dumped goods to which the preliminary determination applies, as to whether
 - (i) either
 - (A) there has occurred a considerable importation of like goods that were dumped, which dumping has caused material injury or would have caused material injury except for the application of anti-dumping measures, or
 - (B) the importer of the goods was or should have been aware that the exporter was practising dumping and that the dumping would cause material injury, and
 - (ii) material injury has been caused by reason of the fact that the dumped goods
 - (A) constitute a massive importation into Canada, or
 - (B) form part of a series of importations into Canada, which importations in the aggregate are massive and have occurred within a relatively short period of time,

and it appears necessary to the Tribunal that duty be assessed on the imported goods in order to prevent the recurrence of that material injury; and

- (c) in the case of any subsidized goods to which the preliminary determination applies where a subsidy on the goods is an export subsidy, as to whether
 - (i) material injury has been caused by reason of the fact that the subsidized goods
 - (A) constitute a massive importation into Canada, or
 - (B) form part of a series of importations into Canada, which importations in the aggregate are massive and have occurred within a relatively short period of time, and

- (ii) a countervailing duty should be imposed on the subsidized goods in order to prevent the recurrence of that material injury.
- (2) **Idem.**—The Tribunal shall, forthwith after receipt by the Secretary pursuant to paragraph 52(1)(f) of a notice of a preliminary determination of dumping or subsidizing in respect of goods with respect to which an undertaking or undertakings have been terminated, make inquiry as to whether the dumping or subsidizing
 - (a) has caused, is causing or is likely to cause material injury or has caused or is causing retardation; or
 - (b) would have caused, during any period after the undertaking or undertakings, as the case may be, with respect to the goods were accepted, material injury except for that acceptance.
- (3) **Tribunal to be guided by Canada's obligations.**—The Tribunal, in considering any question relating to the production in Canada of any goods or the establishment in Canada of that production, shall take fully into account the provisions of
 - (a) in a dumping case, paragraph 1 of Article 4 of the Agreement signed at Geneva. Switzerland, on December 17, 1979 on Implementation of Article VI of the General Agreement on Tariffs and Trade; and
 - (b) in a subsidy case, paragraph 7 of Article 6 of the Subsidies and Countervailing Duties Agreement.
- 43. (1) Tribunal to make order or finding.—In any inquiry referred to in section 42 in respect of any goods, the Tribunal shall, forthwith after the date of receipt by the Secretary of notice of a final determination of dumping or subsidizing with respect to any of those goods, but, in any event, not later than one hundred and twenty days after the date of receipt by the Secretary of notice of a preliminary determination with respect to the goods, make such order or finding with respect to the goods to which the final determination applies as the nature of the matter may require, and shall declare to what goods, including, where applicable, from what supplier and from what country of export, the order or finding applies.
- (1.01) **Separate order or finding.**—Where an inquiry referred to in section 42 involves goods of
 - (a) more than one NAFTA country, or
 - (b) one or more NAFTA countries and goods of one or more other countries.
- the Tribunal shall make a separate order or finding under subsection (1) with respect to the goods of each NAFTA country.
- (1.02) **Suspension of s.** (1.1).—The operation of subsection (1.1) is suspended during the period in which subsection (1.01) is in force.
- (1.1) **Separate order or finding.**—Where an inquiry referred to in section 42 involves goods of the United States as well as goods of other countries, the Tribunal shall make a separate order or finding under subsection (1) with respect to the goods of the United States
- (2) **Notice of order or finding..** The Secretary shall forward by registered mail to the Deputy Minister, the importer, the exporter and such other persons as may be specified by the rules of the Tribunal
 - (a) forthwith after it is made, a copy of each order or finding made by the Imbunal pursuant to this section; and

- (b) not later than fifteen days after the making of an order or finding by the Tribunal pursuant to this section, a copy of the reasons for making the order or finding.
- (3) **Publication of notice.**—The Secretary shall cause a notice of each order or finding made by the Tribunal pursuant to this section to be published in the Canada Gazette. S.C. 1988, c. 65, s. 32; S.C. 1993, c. 44, s. 209.
- **44.** (1) **Recommencement of inquiry.**—Where pursuant to an application for judicial review under the *Federal Court Act* or an application under section 96.1 of this Act, an order or finding of the Tribunal is set aside or is set aside in relation to particular goods, the Tribunal shall
 - (a) where the matter is referred back to the Tribunal for determination, forthwith recommence the inquiry made in respect of the goods to which the order or finding applies or in respect of the particular goods, as the case may be, and
 - (b) in any other case, decide, within thirty days after the final disposition of the application, whether or not to recommence the inquiry in respect of the goods to which the order or finding applies or in respect of the particular goods, as the case may be, and, if the Tribunal decides that the inquiry should be recommenced, forthwith recommence the inquiry,

and a new order or finding compatible with the final disposition of the issues raised by or as a result of the application shall be made by the Tribunal with respect to the goods in respect of which the inquiry is recommenced forthwith and, in any event, not later than one hundred and twenty days after

- (c) where paragraph (a) applies, the date on which the order or finding is set aside, and
- (d) where paragraph (b) applies, the date on which the Tribunal decides that the inquiry should be recommenced.
- (2) **Idem.**—Where an inquiry is recommenced pursuant to subsection (1) with respect to any goods,
 - (a) the Secretary shall forthwith give notice of the recommencement of the inquiry with respect to those goods to every person to whom the Secretary forwarded, pursuant to subsection 43(2), a copy of the order or finding with respect to which the application under the *Federal Court Act* was made; and
 - (b) the Tribunal shall, for the purpose of making the new order or finding referred to in subsection (1), take any further steps in the inquiry, whether by way of hearing or rehearing any matter, the receipt of additional evidence or otherwise, that it considers necessary or advisable. S.C. 1988, c. 65, s. 33; S.C. 1990, c. 8, s. 71.
- **45.** (1) Where imposition of duty not in public interest.—Where, as a result of an inquiry referred to in section 42 arising out of the dumping or subsidizing of any goods, the Tribunal makes an order or finding described in any of sections 3 to 6 with respect to those goods and the Tribunal is of the opinion that the imposition of an anti-dumping or countervailing duty, or the imposition of such a duty in the full amount provided for by any of those sections, in respect of the goods would not or might not be in the public interest, the Tribunal shall, forthwith after making the order or finding,
 - (a) report to the Minister of Finance that it is of that opinion and provide him with a statement of the facts and reasons that caused it to be of that opinion; and
 - (b) cause a copy of the report to be published in the Canada Gazette.
 - (2) Persons interested may make representations.—Where any person interested in an

inquiry referred to in subsection (1) makes a request to the Tribunal for an opportunity to make representations to the Tribunal on the question whether the Tribunal should, if it makes an order described in any of sections 3 to 6 with respect to any goods in respect of which the inquiry is being made, make a report pursuant to paragraph (1)(a) with respect to those goods, the Tribunal shall afford that person an opportunity to make representations to the Tribunal on that question orally or in writing, or both, as the Tribunal directs in the case of that inquiry.

- **46.** Tribunal may direct Deputy Minister to make investigation. Where, during an inquiry referred to in section 42 respecting the dumping or subsidizing of goods to which a preliminary determination under this Act applies, the Tribunal is of the opinion that
 - (a) there is evidence that goods the uses and other characteristics of which closely resemble the uses and other characteristics of goods to which the preliminary determination applies have been or are being dumped or subsidized, and
 - (b) the evidence discloses a reasonable indication that the dumping or subsidizing referred to in paragraph (a) has caused, is causing or is likely to cause material injury or has caused or is causing retardation,

the Tribunal, by notice in writing setting out the description of the goods first mentioned in paragraph (a), may direct the Deputy Minister to cause an investigation to be initiated respecting the dumping or subsidizing of such goods.

- 47. Termination of proceedings. —Subject to Part I.1 or II and subsections 76(2.1) and (2.2), an order or finding made by the Tribunal with respect to any dumped or subsidized goods, other than an order or finding described in any of sections 3 to 6, terminates all proceedings under this Act respecting the dumping or subsidizing of the goods. S.C. 1988, c. 65, s. 34; S.C. 1993, c. 44, s. 210.
 - **48.** [Repealed R.S.C. 1985, c. 47 (4th Supp.), s. 52]

UNDERTAKINGS

- **49.** (1) Acceptance of undertaking.—Subject to subsection (2), the Deputy Minister may, in any investigation respecting the dumping or subsidizing of goods, accept an undertaking or undertakings with respect to dumped or subsidized goods where he is of the opinion that observance of the undertaking or undertakings, as the case may be, will eliminate
 - (a) the margin of dumping of or the subsidy on
 - (i) where the undertaking is given by an exporter, the goods if they are sold by the exporter to importers in Canada, and
 - (ii) where the undertaking is given by the government of a country from which the goods are exported to Canada, the goods if they are exported to Canada from that country pursuant to sales thereof by exporters to importers in Canada; or
 - (b) any material injury or retardation that is being or any material injury that is likely to be caused by the dumping or subsidizing.
- (2) **Idem.**—The Deputy Minister shall not accept an undertaking with respect to dumped or subsidized goods
 - (a) unless he is of the opinion that observance of the undertaking will not cause
 - (i) where the undertaking is given by an exporter, the price at which the goods are sold to importers in Canada by the exporter, or
 - (ii) where the undertaking is given by the government of a country, the price at which

the goods, when exported to Canada from that country, will be sold to importers in Canada,

to increase by more than the estimated margin of dumping of the goods or the estimated amount of the subsidy thereon;

- (b) where he has made a preliminary determination of dumping or subsidizing with respect to the goods; or
- (c) where he is of the opinion that it would not be practicable to administer the undertaking or undertakings, as the case may be.
- **50.** Procedure where undertaking accepted.—Forthwith after accepting, in any investigation, an undertaking or undertakings with respect to dumped or subsidized goods, the Deputy Minister shall
 - (a) cause further action in the investigation to be suspended; and
 - (b) cause notice of the acceptance of the undertaking or undertakings, as the case may be, of the suspension referred to in paragraph (a) and of his reasons for accepting the undertaking or undertakings, as the case may be, to be given and published as provided in paragraph 34(a).
- **51.** (1) **Deputy Minister to terminate undertaking.**—Where, within thirty days after the date of the notice of acceptance of an undertaking or undertakings with respect to dumped or subsidized goods given pursuant to paragraph 50(b), the Deputy Minister receives from
 - (a) in the case of dumped goods, the importer or exporter of the goods or the complainant in the investigation respecting the goods, and
 - (b) in the case of subsidized goods, the importer, exporter or government of the country of export of the goods or the complainant in the investigation respecting the goods,

a written request that the undertaking or any such undertaking, as the case may be, be terminated, the Deputy Minister shall forthwith terminate the undertaking in respect of which the request was received.

- (2) **Deputy Minister to resume investigation.**—Where the Deputy Minister terminates any undertaking pursuant to subsection (1), he shall forthwith cause the investigation to be resumed with respect to all the goods to which the investigation related when he accepted the undertaking or undertakings, as the case may be, and shall cause notice of the resumption of the investigation to be given as provided in paragraph 34(a).
- **52.** (1) **Termination of undertaking by Deputy Minister.**—Where, at any time after he has accepted an undertaking or undertakings with respect to any dumped or subsidized goods that were the subject of an investigation, the Deputy Minister
 - (a) is satisfied that the undertaking or any such undertaking, as the case may be, has been or is being violated,
 - (b) is of the opinion that he would not have accepted the undertaking or undertakings if the information available to him at that time had been available to him when he accepted the undertaking, or
 - (c) is satisfied that he would not have accepted the undertaking or undertakings if the circumstances prevailing at that time had prevailed when he accepted the undertaking or undertakings, as the case may be,

he shall forthwith

(d) terminate the undertaking or undertakings,

- (e) make a preliminary determination of dumping or subsidizing with respect to each of the goods that were the subject of the investigation in accordance with
 - (i) in the case of dumped goods, paragraphs 38(1)(a) and (c), and
 - (ii) in the case of subsidized goods, paragraphs 38(1)(b) and (c),
- (f) cause notice of the termination of the undertaking or undertakings and of the making of the preliminary determination to be given and published as provided in paragraph 34(a) and filed with the Secretary in writing, and
- (g) cause the investigation with respect to the goods referred to in paragraph (e) to be resumed.
- (2) Where no action to be taken.—Where, in any investigation respecting the dumping or subsidizing of goods, a number of undertakings are accepted by the Deputy Minister under section 49 and any one or more of those undertakings have been or are being violated, the Deputy Minister shall not, unless he sees good reason to the contrary, take any action under subsection (1) if the undertakings that have not been and are not being violated account for substantially all the imports into Canada of the goods.
- 53. (1) Review and renewal of undertaking by Deputy Minister. The Deputy Minister shall review an undertaking before the expiration of three years from the date on which he accepted it and before the expiration of each subsequent period, if any, for which he renews it pursuant to this section and if, on any such review, he is satisfied
 - (a) that the undertaking continues to serve the purpose for which it was intended, and
 - (b) that he is not required to terminate it under section 52, he shall renew the undertaking for a further period of not more than three years.
- (2) **Expiration of undertaking.** —An undertaking that is not renewed for a further period pursuant to a review under subsection (1) expires at the end of the period before the expiration of which the review was required to be made.
- (3) Expiration terminates all proceedings.—Where an undertaking expires by reason of subsection (2), the expiration terminates all proceedings under this Act respecting the dumping or subsidizing of the goods to which the undertaking relates, unless, in any case where the Deputy Minister has accepted two or more undertakings, the Deputy Minister, for good reason, otherwise directs.
- (4) **Notice.**—Where an undertaking is renewed or not renewed pursuant to subsection (1), the Deputy Minister shall cause notice of the decision to renew or not to renew, as the case may be, to be given and published as provided in paragraph 34(a) and filed with the Secretary, S.C. 1988, c. 65, s. 35.
- **53.1** (1) **Action on decision referred back by Court.** Where a decision under subsection 53(1) to renew or not to renew an undertaking is set aside and the matter referred back to the Deputy Minister on an application under section 96.1,
 - (a) the Deputy Minister shall
 - (i) reconsider the matter and make a new decision, and
 - (ii) cause notice of the action taken pursuant to subparagraph (i) to be given and published as provided in paragraph 34(a) and filed with the Secretary; and
 - (b) in the case of a decision not to renew an undertaking, the undertaking shall be deemed to have been renewed on the day on which the order referring the matter back is made and continues in effect until action is taken pursuant to subparagraph (a)(1).

- (2) Action on decision referred back by panel.—Where a decision under subsection 53(1) to renew or not to renew an undertaking is referred back to the Deputy Minister under subsection 77.015(3) or (4) or 77.019(5), or under subsection 77.15(3) or (4) or 77.19(4),
 - (a) the Deputy Minister shall
 - (i) reconsider the decision and confirm, rescind or vary it, and
 - (ii) cause notice of the action taken pursuant to subparagraph (i) to be given and published as provided in paragraph 34(a) and filed with the Secretary and the Canadian Secretary; and
 - (b) in the case of a decision not to renew an undertaking, the undertaking shall be deemed to have been renewed on the day on which the order is made and continues in effect until action is taken pursuant to subparagraph (a)(i). S.C. 1988, c. 65, s. 36; S.C. 1993, c. 44, s. 211.
- **54.** Amendment of undertaking.—Subject to subsections 53(1) and (2), an undertaking may be amended at any time in accordance with its terms.

DETERMINATIONS BY DESIGNATED OFFICER

- 55. Determination by designated officer.—Where the Deputy Minister
- (a) has made a final determination of dumping or subsidizing under subsection 41(1) with respect to any goods, and
- (b) has received from the Tribunal an order or finding described in any of sections 4 to 6 with respect to the goods to which the final determination applies,

the Deputy Minister shall cause a designated officer to determine, not later than six months after the date of the order or finding,

- (c) in respect of any goods released during the period described in subparagraph 4(b)(i) or (ii) or paragraph 5(b) or 6(b), whichever is applicable, that appear to be goods of the same
- description as goods described in the order or finding, whether the goods so released are in fact goods of the same description as goods described in the order or finding,
- (d) the normal value and export price of or the amount of the subsidy on the goods so released, and
- (e) where section 6 or 10 applies in respect of the goods, the amount of the export subsidy on the goods. R.S.C. 1985, c. 1 (2nd Supp.), ss. 201, 202.

RE-DETERMINATIONS AND APPEALS

Re-determination by Designated Officer or Deputy Minister

- **56.** (1) **Determination final.**—Where, subsequent to the making of an order or finding of the Tribunal or an order of the Governor in Council imposing a countervailing duty under section 7, any goods are imported into Canada, a determination by a customs officer
 - (a) as to whether the imported goods are goods of the same description as goods to which the order or finding of the Tribunal or the order of the Governor in Council applies,
 - (b) of the normal value of or the amount, if any, of the subsidy on any imported goods that are of the same description as goods to which the order or finding of the Tribunal or the order of the Governor in Council applies, and
 - (c) of the export price of or the amount, if any, of the export subsidy on any imported

goods that are of the same description as goods to which the order or finding of the Tribunal applies,

made within thirty days after they were accounted for under subsection 32(1), (3) or (5) of the *Customs Act* is final and conclusive.

- (1.01) **Request for re-determination.**—Notwithstanding subsection (1),
- (a) where a determination referred to in that subsection is made in respect of any goods, including goods of a NAFTA country, the importer of the goods may, within ninety days after the making of the determination, make a written request in the prescribed form and manner and accompanied by the prescribed information to a designated officer for a redetermination, if the importer has paid all duties owing on the goods; and
- (b) where a determination referred to in that subsection is made in respect of goods of a NAFTA country, the government of that NAFTA country or, if they are of that NAFTA country, the producer, manufacturer or exporter of the goods may make a request as described in paragraph (a), whether or not the importer of the goods has paid all duties owing on the goods.
- (1.02) **Suspension of s. (1.1).**—The operation of subsection (1.1) is suspended during the period in which subsection (1.01) is in force.
 - (1.1) **Request for re-determination.** –Notwithstanding subsection (1).
 - (a) where a determination referred to in that subsection is made in respect of any goods, including goods of the United States, the importer of the goods may, within ninety days after the making of the determination, make a written request in the prescribed form and manner and accompanied by the prescribed information to a designated officer for a redetermination, if the importer has paid all duties owing on the goods; and
 - (b) where a determination referred to in that subsection is made in respect of goods of the United States, the United States government or the producer, manufacturer or exporter of the goods may make a request as described in paragraph (a), whether or not the importer of the goods has paid all duties owing on the goods.
- (2) **Determination deemed to have been made.**—Where, in the case of any imported goods referred to in subsection (1), a determination referred to in that subsection that is relevant in the case of those goods is not in fact made in respect of them within the thirty days referred to in that subsection, that determination shall be deemed to have been made
 - (a) on the thirtieth day after the goods were accounted for; and
 - (b) in accordance with any representations made by the person accounting for the goods at the time of the accounting, R.S.C. 1985, c. 1 (2nd Supp.), s. 203; S.C. 1988, c. 65, s. 37; S.C. 1993, c. 44, s. 212.
- **57. Review by designated officer.** —A designated officer may re-determine any determination referred to in subsection 56(1),
 - (a) in accordance with a request made pursuant to subsection 56(1.01) or (1.1), or
- (b) in any case where he deems it advisable, within two years after the determination, unless the Deputy Minister has previously re-determined the determination pursuant to section 59. R.S.C. 1985, c. 1 (2nd Supp.), s. 204; S.C. 1988, c. 65, s. 38; S.C. 1993, c. 44, s. 218
- **58.** (1) **Determination or re-determination final.** A determination or re-determination by a designated officer under section 55 or 57 with respect to any imported goods is final and conclusive.

- (2) Request for re-determination.—Notwithstanding subsection (1),
- (a) where a determination or re-determination referred to in that subsection is made in respect of any goods, including goods of the United States, the importer of the goods may, within ninety days after the date of the determination or re-determination, make a written request in the prescribed form and manner and accompanied by the prescribed information to the Deputy Minister for a re-determination, if the importer has paid all duties owing on the goods; and
- (b) where a determination or re-determination referred to in that subsection is made in respect of goods of the United States, the United States government or the producer, manufacturer or exporter of the goods may make a request as described in paragraph (a), whether or not the importer has paid all duties owing on the goods. R.S.C. 1985, c. 1 (2nd Supp.), s. 205; S.C. 1988, c. 65, s. 39; S.C. 1993, c. 44, s. 214.
- **59.** (1) **Permissive re-determination.**—Subject to subsection (3), the Deputy Minister may re-determine any determination or re-determination referred to in section 55, 56 or 57 made in respect of any imported goods
 - (a) in accordance with a request made pursuant to subsection 58(1.1) or (2);
 - (b) at any time, if the importer or exporter has made any misrepresentation or committed a fraud in accounting for the goods under subsection 32(1), (3) or (5) of the *Customs Act* or in obtaining release of the goods;
 - (c) at any time, if subsection 2(6) or section 26 applies or at any time becomes applicable in respect of the goods;
 - (d) at any time, for the purpose of giving effect to a decision of the Tribunal, the Federal Court or the Supreme Court of Canada with respect to the goods; and
 - (e) in any case where the Deputy Minister deems it advisable, within two years after the determination referred to in section 55 or subsection 56(1), as the case may be, if the Deputy Minister has not previously made a re-determination with respect to the goods pursuant to any of paragraphs (a) to (d) or subsection (2) or (3).
 - (1.1) **Request for re-determination.**—Notwithstanding subsection (1),
 - (a) where a determination or re-determination referred to in that subsection is made in respect of any goods, including goods of a NAFTA country, the importer of the goods may, within ninety days after the date of the determination or re-determination, make a written request in the prescribed form and manner and accompanied by the prescribed information to the Deputy Minister for a re-determination, if the importer has paid all duties owing on the goods; and
 - (b) where a determination or re-determination referred to in that subsection is made in respect of goods of a NAFTA country, the government of that NAFTA country or, if they are of that NAFTA country, the producer, manufacturer or exporter of the goods may make a request as described in paragraph (a), whether or not the importer has paid all duties owing on the goods.
- (1.2) Suspension of s. (2).—The operation of subsection (2) is suspended during the period in which subsection (1.1) is in force.
- (2) **Idem.**—The Deputy Minister may re-determine any determination or re-determination referred to in section 55, 56 or 57 made in respect of any imported goods at any time for the purpose of giving effect to a decision of a panel under Part I.1 or II with respect to the goods.
 - (3) Mandatory re-determination.—On a request made under subsection 58(1.1) or (2)

to re-determine a determination under section 55 or a re-determination under section 57, the Deputy Minister shall

- (a) in the case of a determination under section 55 or a re-determination under paragraph 57(b), re-determine the determination or re-determination within one year after the request under subsection 58(1.1) or (2) was made; and
- (b) in the case of a re-determination under paragraph 57(a), re-determine the re-determination within one year after the request under subsection 56(1.01) or (1.1) was made.
- (3.1) **Notice of re-determination.**—The Deputy Minister shall cause notice of each re-determination under this section to be forwarded, by registered mail, to the importer and, where the imported goods are goods of a NAFTA country, to the government of that NAFTA country, to such persons as may be prescribed and, if the re-determination gives effect to a decision of a panel under Part I.1, to the Canadian Secretary.
- (3.2) **Presumption.**—A notice sent to the government of a NAFTA country pursuant to subsection (3.1) shall be deemed, for the purposes of this Act, to have been received by that government ten days after the day on which it was mailed.
- (3.3) **Suspension of ss. (4) and (5).**—The operation of subsections (4) and (5) is suspended during the period in which subsections (3.1) and (3.2) are in force.
- (4) **Notice of re-determination.**—The Deputy Minister shall cause notice of each re-determination under this section to be forwarded, by registered mail, to the importer and, where the imported goods are goods of the United States, to the United States government, to such persons as may be prescribed and, if the re-determination gives effect to a decision of a panel under Part II, to the Canadian Secretary.
- (5) **Presumption.**—A notice sent to the United States government pursuant to subsection (4) shall be deemed, for the purposes of this Act, to have been received by that government ten days after the day on which it was mailed. R.S.C. 1985, c. 1 (2nd Supp.), s. 206; R.S.C. 1985, c. 47 (4th Supp.), s. 52; S.C. 1988, c. 65, s. 40; S.C. 1993, c. 44, s. 215.
- **60. Effect of re-determination.**—Where, in accordance with section 57 or 59, a redetermination as to whether any goods are goods described in paragraph 56(1)(a) or a redetermination of the normal value or export price of or the amount of the subsidy or export subsidy on the goods has been made,
 - (a) the importer shall pay any additional duty payable with respect to the goods, or
 - (b) the whole or a part of any duty paid in respect of the goods shall be returned to the importer forthwith,

if on the re-determination it is determined that the additional duty is payable or that the whole or the part of the duty paid was not payable, as the case may be.

Appeal to Canadian International Trade Tribunal

- **61.** (1) **Appeal to the Tribunal.**—Subject to section 77.012 or 77.12, a person who deems himself aggrieved by a re-determination of the Deputy Minister made pursuant to section 59 with respect to any goods may appeal therefrom to the Tribunal by filing a notice of appeal in writing with the Deputy Minister and the Secretary of the Tribunal within ninety days after the day on which the re-determination was made.
- (2) **Publication of notice of appeal.**—Notice of the hearing of an appeal under subsection (1) shall be published in the Canada Gazette at least twenty-one days prior to the day of the

hearing, and any person who on or before that day enters an appearance with the Secretary of the Tribunal may be heard on the appeal.

(3) Order or finding of the Tribunal.—On any appeal under subsection (1), the Tribunal may make such order or finding as the nature of the matter may require and, without limiting the generality of the foregoing, may declare what duty is payable or that no duty is payable on the goods with respect to which the appeal was taken, and an order, finding or declaration of the Tribunal is final and conclusive subject to further appeal as provided in section 62. R.S.C. 1985, c. 47 (4th Supp.), s. 52; S.C. 1993, c. 44, s. 216.

Appeal to Federal Court

- **62**. (1) **Appeal to Federal Court on question of law.**—Any of the parties to an appeal under section 61, namely,
 - (a) the person who appealed,
 - (b) the Deputy Minister, or
 - (c) any person who entered an appearance in accordance with subsection 61(2), if the person has a substantial interest in the appeal and has obtained leave from the Court or a judge thereof,

may, within ninety days after the making of an order or finding under subsection 61(3), appeal therefrom to the Federal Court of Appeal on any question of law.

- (2) **Disposition of appeal.**—The Federal Court of Appeal may dispose of an appeal by making such order or finding as the nature of the matter may require and, without limiting the generality of the foregoing, may
 - (a) declare what duty is payable or that no duty is payable on the goods with respect to which the appeal to the Tribunal was taken; or
 - (b) refer the matter back to the Tribunal for re-hearing. R.S.C. 1985, c. 47 (4th Supp.), s. 52; S.C. 1990, c. 8, s. 72.
- **62.1** (1) **Interest on amounts owing.**—Any person who fails to pay any amount owing under paragraph 60(a) shall pay, in addition to the amount owing, interest at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month commencing thirty days after the amount became outstanding during which any amount remains outstanding, calculated on the amount outstanding.
- (2) **Interest on refunds.**—Any person who is given a refund under paragraph 60(b) of an amount paid shall be given, in addition to the refund, interest at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month between the time the amount was paid and the time the refund is given, calculated on the amount of the refund.
- (3) Amounts under ten dollars.—Where interest owing under this section is less than ten dollars, no interest shall be paid. R.S.C. 1985, c. 1 (2nd Supp.), s. 207.

63 to 75. [Repealed R.S.C. 1985, c. 47 (4th Supp.), s. 52]

Finality and Review of Orders and Findings

76. (1) **Application for judicial review.**—Subject to subsection 61(3) and Part I.1 or II, an application for judicial review of an order or finding of the Tribunal under this Act may be made to the Federal Court of Appeal on any of the grounds set out in subsection 181.(4) of the Federal Court Act.

- (2) **Review of orders by Tribunal and re-hearing.** At any time after the making of an order or finding described in any of sections 3 to 6, the Tribunal may, on its own initiative or at the request of the Deputy Minister or any other person or of any government, review the order or finding and, in the making of the review, may re-hear any matter before deciding it.
- (2.1) **Idem.**—Where the Tribunal receives notice of action taken pursuant to paragraph 41.1(1)(a) or (2)(a) in respect of goods to which an order or finding of the Tribunal, other than an order or finding described in any of sections 3 to 6, applies, the Tribunal may, on its own initiative or at the request of the Deputy Minister or any other person or of any government, review the order or finding and, in making such a review, may re-hear any matter before deciding it.
- (2.2) **Idem.**—Where an order or finding of the Tribunal is referred back to the Tribunal under subsection 77.015(3) or (4) or 77.019(5), or under subsection 77.15(3) or (4) or 77.19(4), the Tribunal shall review the order or finding and, in making such a review, may re heat any matter before deciding it.
- (3) **Refusal.**—The Tribunal shall not initiate any review pursuant to subsection (2) or (2.1) at the request of any person or government unless the person or government satisfies the Tribunal that a review is warranted.
- (3.1) **Order of refusal.** Where the Tribunal decides not to initiate a review pursuant to subsection (2) at the request of a person or government, the Tribunal shall make an order to that effect and give reasons therefor, and the Secretary shall forward a copy of the order and the reasons by registered mail to that person or government and cause notice of the order to be published in the *Canada Gazette*.
- (4) **Completion of review.** On completion of a review pursuant to subsection (2) of an order or finding, the Tribunal shall make an order rescinding the order or finding or continuing it with or without amendment, as the circumstances require, and give reasons for the decision
- (4.1) **Idem.**—On completion of a review pursuant to subsection (2.1) of an order or finding, the Tribunal shall confirm the order or finding or resemd it and make such other order or finding with respect to the goods to which the order or finding under review applies as the nature of the matter may require, shall give reasons for the decision and, where it makes another order or finding, shall declare to what goods, including, where applicable, from what supplier and from what country of export, the order or finding applies.
- (4.11) **Separate order or finding.** Where a review pursuant to subsection (2.1) involves goods of
 - (a) more than one NAFTA country, or
 - (b) one or more NAFTA countries and goods of one or more other countries
- and the Tribunal makes another order or finding pursuant to subsection (4.1), the Tribunal shall make a separate order or finding under that subsection with respect to the goods of each NAFTA country.
- (4.12) Suspension of s. (4.2). The operation of subsection (4.2) is suspended during the period in which subsection (4.11) is in force.
- (4.2) **Separate order or finding.** Where a review pursuant to subsection (2.1) involves goods of the United States as well as goods of other countries and the Tribunal makes another order or finding pursuant to subsection (4.1), the Tribunal shall make a separate order or finding under that subsection with respect to the goods of the United States.

- (4.3) **Notice.**—On completion of a review pursuant to subsection (2), (2.1) or (2.2), the Secretary shall
 - (a) forward by registered mail to the Deputy Minister, such other persons and such governments as may be specified by the rules of the Tribunal and, in the case of a review under subsection (2.2), the Canadian Secretary,
 - (i) forthwith after the review is completed, a copy of the order or finding made under subsection (4) or (4.1), as the case may be, and
 - (ii) not later than fifteen days after the completion of the review, a copy of the reasons for the decision; and
 - (b) cause notice of the order or finding to be published in the Canada Gazette.
- (5) **Order or finding deemed to be rescinded.**—Where the Tribunal has not initiated a review pursuant to subsection (2) with respect to an order or finding before the expiration of five years after,
 - (a) if no order continuing the order or finding has been made pursuant to subsection (4), the day on which the order or finding was made, or
 - (b) if one or more orders continuing the order or finding have been made pursuant to subsection (4), the day on which the last such order was made,

the order or finding shall be deemed to have been rescinded as of the expiration of the five years. R.S.C. 1985, c. 47 (4th Supp.), s. 52; S.C. 1988, c. 65, s. 41; S.C. 1993, c. 44, s. 217.

77. [Repealed R.S.C. 1985, c. 47 (4th Supp.), s. 52]

PART I.1

DISPUTE SETTLEMENT RESPECTING GOODS OF A NAFTA COUNTRY

Interpretation

77.01 (1) **Definitions.**—In this Part.

- "appropriate authority".—"appropriate authority", in relation to a definitive decision, means either the Deputy Minister or the Tribunal, according to which made the decision;
- "committee".—"committee" means an extraordinary challenge committee appointed pursuant to section 77.018:
- "definitive decision".-- "definitive decision" means
 - (a) a final determination of the Deputy Minister under paragraph 41(1)(a),
 - (b) a decision of the Deputy Minister under paragraph 41(l)(b) to cause an investigation to be terminated.
 - (c) an order or finding of the Tribunal under subsection 43(1),
 - (d) a decision of the Deputy Minister under subsection 53(1) to renew or not to renew an undertaking,
 - (e) a re-determination of the Deputy Minister under subsection 59(1),
 - (f) a re-determination of the Deputy Minister under subsection 59(3),
 - (g) an order of the Tribunal under subsection 76(3.1),
 - (h) an order of the Tribunal under subsection 76(4).

PART I.1—DISPUTE SETTLEMENT RESPECTING NAFTA GOODS S. 77.011

- (i) an order or finding of the Tribunal under subsection 76(4.1) respecting a review pursuant to subsection 76(2.1), or
- (j) an order or finding of the Tribunal under subsection 91(3)

in so far as it applies to or is made in respect of particular goods of a NAFTA country, but does not include any such determination, re-determination, decision, order or finding that is made for the purpose of giving effect to a decision of the Federal Court of Canada or the Supreme Court of Canada relating to those goods;

- "Minister".—"Minister" means the Minister for International Trade;
- "NAFTA country Secretary". "NAFTA country Secretary" means the secretary of the national Section of the Secretariat provided for in Article 2002 of the North American Free Trade Agreement;
- "panel".—"panel" means a panel appointed pursuant to section 77.013;
- "rules".—"rules" means the rules of procedure, as amended from time to time, made pursuant to Chapter Nineteen of the North American Free Trade Agreement:
- "special committee".— "special committee" means a special committee appointed pursuant to subsection 77.023(2).
- (2) **Inconsistency.**—In the event of any inconsistency between the provisions of this Part and the provisions of the *Federal Court Act*, the provisions of this Part prevail to the extent of the inconsistency. S.C. 1993, c. 44, s. 218.

Request for Review

- 77.011 (1) Request for review of definitive decision. The Minister or the government of a NAFTA country, the goods of which are the subject of a definitive decision, may request, in accordance with paragraph 4 of Article 1904 of the North American Free Trade Agreement, that the definitive decision, in so far as it applies to goods of that NAFTA country, be reviewed by a panel.
- (2) **Idem.**—Any person who, but for section 77.012, would be entitled to apply under the *Federal Court Act* or section 96.1 of this Act, or to appeal under section 61 of this Act, in respect of a definitive decision may, in accordance with paragraph 4 of Article 1904 of the North American Free Trade Agreement, file with the Canadian Secretary a request that the definitive decision be reviewed by a panel.
- (3) **Deeming.**—A request made under subsection (2) shall be deemed to be a request by the Minister for binational panel review within the meaning of paragraph 4 of Article 1904 of the North American Free Trade Agreement.
- (4) Limitation period.—A request under subsection (1) or (2) may only be made within thirty days after the day on which notice of the definitive decision is published in the *Canada Gazette* or, in the case of a re-determination of the Deputy Minister under subsection 59(1) or (3), within thirty days after the day on which notice of the re-determination is received by the government of a NAFTA country.
- (5) **Grounds for request.**—A request under subsection (1) or (2) for the review of a definitive decision may be made only on a ground set forth in subsection 18.1(4) of the *Federal Court Act*.
- (6) **Notification of request for review.**—On receiving a request from the government of a NAFTA country under subsection (1) or on receiving a request under subsection (2), the

Canadian Secretary shall notify the Minister and the appropriate NAFTA country Secretary of the request and the day on which it was received by the Canadian Secretary.

- (7) **No application or appeal.**—Where a request is made under subsection (1) or (2) for the review of a definitive decision by a panel, no person or government may apply under the *Federal Court Act* or section 96.1 of this Act or appeal under section 61 of this Act in respect of the decision. S.C. 1993, c. 44, s. 218.
- **77.012** (1) **Applications and appeals.**—No person or government may apply under the *Federal Court Act* or section 96.1 of this Act or appeal under section 61 of this Act in respect of a definitive decision
 - (a) before the expiration of the limitation period established by paragraph 4 of Article 1904 of the North American Free Trade Agreement for requesting a review of the decision; and
 - (b) unless the person or government has, within twenty days after the day on which that limitation period commences, given notice of the intention to make such an application or appeal in writing to the Canadian Secretary and the appropriate NAFTA country Secretary and in the prescribed manner to any other person who, but for this section, would be entitled to so apply or appeal.
- (2) **Limitation period extended.**—For the purpose of permitting a government or person to apply under the *Federal Court Act* or section 96.1 of this Act in respect of a definitive decision after the expiration of the limitation period established by paragraph 4 of Article 1904 of the North American Free Trade Agreement for requesting a review of the decision, the limitation period referred to in subsection 18.1(2) of the *Federal Court Act* and subsection 96.1(3) of this Act is extended by ten days and shall be calculated as commencing on the day on which the limitation period established by that paragraph commences. S.C. 1993, c. 44, s. 218.

Establishment of Panels

- **77.013** (1) **Appointment of panel.**—On a request under section 77.011 for the review of a definitive decision by a panel, a panel shall be appointed for that purpose in accordance with paragraphs 1 to 4 of Annex 1901.2 to Chapter Nineteen of the North American Free Trade Agreement and any regulations made in connection therewith.
- (2) **Judges may be appointed.**—Judges of any superior court in Canada and persons who are retired judges of any superior court in Canada are eligible to be appointed to a panel.
- (3) **Single panel.**—Where a request is made for the review of a final determination of the Deputy Minister under paragraph 41(1)(a) that applies to or is made in respect of particular goods of a NAFTA country and another request is made for the review of an order or finding of the Tribunal under subsection 43(1) that applies to or is made in respect of those goods, one panel may, with the consent of the Minister and the government of that NAFTA country, be appointed to review the final determination and the order or finding. S.C. 1993, c. 44, s. 218.
- **77.014 Administrative record forwarded.**—On the appointment of the members of a panel to review a definitive decision, the appropriate authority shall cause a copy of the administrative record to be forwarded in accordance with the rules. S.C. 1993, c. 44, s. 218.

Review by Panel

77.015 (1) Conduct of review.—A panel shall conduct a review of a definitive decision in accordance with Chapter Nineteen of the North American Free Trade Agreement and the rules.

- (2) **Powers of panel.**—A panel has such powers, rights and privileges as are conferred on it by the regulations.
- (3) **Disposition after review.**—On completion of the review of a definitive decision, a panel shall determine whether the grounds on which the review was requested have been established and shall make an order confirming the decision or referring the matter back to the appropriate authority for reconsideration within the period specified by the panel.
- (4) **Review of action of appropriate authority.** —A panel may, on its own initiative or on a request made in accordance with the rules, review the action taken by the appropriate authority pursuant to an order under subsection (3) and make a further order as described in that subsection within ninety days after the day on which the Canadian Secretary receives notice of the action.
- (5) **Decision.**—A decision of a panel shall be recorded in writing and shall include the reasons for the decision and any dissenting or concurring opinions of members of the panel, and the Canadian Secretary shall forward, by registered mail, a copy thereof and of the order made pursuant to subsection (3) or (4) to the Minister, the government of the NAFTA country involved, the appropriate authority and any other person who was heard in the review and shall cause notice of the decision to be published in the *Canada Gazette*. S.C. 1993, c. 44, s. 218.

Action on Decision of Panel

- 77.016 (1) Action by appropriate authority. Where a panel makes an order under subsection 77.015(3) or (4) or takes any action under subsection 77.019(5) referring a matter back to the appropriate authority for reconsideration, the appropriate authority shall, within the period specified by the panel, take action under this Act not inconsistent with the decision of the panel.
- (2) **Appropriate authority not required to act twice.** Notwithstanding any other provision of this Act, an appropriate authority is not required to act on an order under subsection 77.015(4), unless it requires the authority to take action that is different from that taken by the authority under the order under subsection 77.015(3), S.C. 1993, c. 44, s. 218.

Extraordinary Challenge Proceeding

- 77.017 (1) Request for extraordinary challenge proceeding. Within the period after a panel makes an order under subsection 77.015(3) or (4) prescribed by the rules, the Minister or the government of the NAFTA country to which the order relates may request, in writing to the Canadian Secretary, that an extraordinary challenge proceeding be commenced with respect to the order.
- (2) **Ground for request.**—A request for an extraordinary challenge proceeding may be made only on a ground set forth in paragraph 13 of Article 1904 of the North American Free Trade Agreement.
- (3) Notification of request for extraordinary challenge proceeding. On receiving a request under this section made by the Minister, the Canadian Secretary shall notify the appropriate NAFTA country Secretary of the request and the day on which it was received by the Canadian Secretary, and on receiving a request under this section made by the government of a NAFTA country, the Canadian Secretary shall notify the Minister of the request and the day on which it was received by the Canadian Secretary, S.C. 1993. c. 44, s. 218.
- 77.018 Appointment of extraordinary challenge committee. On a request under section 77.017 for an extraordinary challenge proceeding, an extraordinary challenge commit

tee shall be appointed for that purpose in accordance with paragraph 1 of Annex 1904.13 to Chapter Nineteen of the North American Free Trade Agreement and any regulations made in connection therewith. S.C. 1993, c. 44, s. 218.

- **77.019** (1) Conduct of extraordinary challenge proceeding.—A committee shall conduct an extraordinary challenge proceeding and make a decision in accordance with Annex 1904.13 to Chapter Nineteen of the North American Free Trade Agreement and the rules.
- (2) **Powers of committee.**—A committee has such powers, rights and privileges as are conferred on it by the regulations.
- (3) Where no grounds.—Where a committee conducting an extraordinary challenge proceeding determines that the grounds in the request for the proceeding are not established, the committee shall deny the request, and the decision of the panel in respect of which the request was made shall stand affirmed.
- (4) **New Panel.**—Where an order of a panel is set aside by a committee, a new panel shall, in accordance with this Part, be appointed and conduct a review of the definitive decision that was the subject of that order.
- (5) Action by panel.—Where an order of a panel is referred back to the panel by a committee, the panel shall take action not inconsistent with the decision of the committee.
- (6) **Decision.**—A decision of a committee shall be recorded in writing and shall include the reasons for the decision and any dissenting or concurring opinions of members of the committee, and the Canadian Secretary shall forward, by registered mail, a copy thereof and of the order made by the committee to the Minister, the government of the NAFTA country involved, the appropriate authority and any other person who was heard in the proceeding and shall cause notice of the decision to be published in the *Canada Gazette*. S.C. 1993, c. 44, s. 218.
- 77.02 (1) Orders and decisions final.—Subject to subsection 77.015(4) and section 77.019, an order or decision of a panel or committee is final and binding and is not subject to appeal.
- (2) **No review.**—Subject to subsection 77.015(4) and section 77.019, no order, decision or proceeding of a panel or committee made or carried on under, or purporting to be made or carried on under, this Act shall be
 - (a) questioned, reviewed, set aside, removed, prohibited or restrained, or
 - (b) made the subject of any proceedings in, or any process or order of, any court, whether by way of or in the nature of injunction, *certiorari*, prohibition, *quo warranto*, declaration or otherwise.

on any ground, including the ground that the order, decision or proceeding is beyond the jurisdiction of the panel or committee to make or carry on or that, in the course of any proceeding, the panel or committee for any reason exceeded or lost jurisdiction.

(3) No references.—Subsection 18.3(1) of the *Federal Court Act* does not apply to a panel, committee or special committee. S.C. 1993, c. 44, s. 218.

Memhers

- **77.021** (1) Code of conduct.—Every member of a panel, committee or special committee shall comply with the code of conduct, as amended from time to time, established pursuant to Article 1909 of the North American Free Trade Agreement.
 - (2) Disclosure undertaking respecting confidential information.—Every member of a

panel and every prescribed person shall sign and comply with a disclosure undertaking, in the prescribed form, respecting the disclosure and use of confidential, personal, business proprietary and other privileged or prescribed information made available to the member or person in proceedings under this Part.

- (3) **Immunity.**—Subject to section 77.034, no action or other proceeding lies or shall be commenced against a member of a panel for or in respect of anything done or omitted to be done, or purported to be done or omitted to be done, under this Part. S.C. 1993, c. 44, s. 218.
- **77.022 Remuneration and expenses of panel members.**—Every member of a panel shall be paid such remuneration and is entitled to such travel and living expenses incurred in the performance of the member's duties under this Part as are fixed by the Free Trade Commission established pursuant to Article 2001 of the North American Free Trade Agreement. S.C. 1993. c. 44, s. 218.

Review by Special Committee

- **77.023** (1) **Request for review.**—A request for a review by a special committee may be made to the Canadian Secretary by the government of a NAFTA country only with respect to an allegation referred to in Article 1905.1 of the North American Free Trade Agreement.
- (2) **Appointment of special committee.**—On a request for a review referred to in subsection (1), a special committee shall be appointed for that purpose in accordance with Annex 1904.13 of the North American Free Trade Agreement and any regulations made in connection therewith. S.C. 1993, c. 44, s. 218.
- 77.024 (1) Stay of panel reviews and committee proceedings. —Subject to subsection (2), where a special committee makes an affirmative finding against a NAFTA country pursuant to a request made by Canada in respect of an allegation referred to in Article 1905.1 of the North American Free Trade Agreement, the Minister shall stay all
 - (a) panel reviews under section 77.011, and
 - (b) committee proceedings under section 77.017

that were requested by the government or a person of that NAFTA country after the date on which consultations were requested under Article 1905.1 of the North American Free Trade Agreement.

- (2) **Exception.**—Subsection (1) does not apply in respect of a panel review or committee proceeding that was requested more than one hundred and fifty days prior to the affirmative finding by the special committee. S.C. 1993, c. 44, s. 218.
- 77.025 Stay on request.—Where a special committee makes an affirmative finding against Canada pursuant to a request made by the government of a NAFTA country, the government of that NAFTA country may request that the Minister stay all
 - (a) panel reviews under section 77.011, and
 - (b) committee proceedings under section 77.017

that were requested by the government or a person of that NAFTA country, and where such a request for a stay is made the Minister shall stay all such reviews and proceedings. S.C. 1993. c. 44, s. 218.

77.026 When stay becomes effective.—Where the Minister stays panel reviews and committee proceedings, the stay shall become effective

- (a) where the stay is made under section 77.024, on the day following the date on which the special committee made the affirmative finding; and
- (b) where the stay is made under section 77.025, on the day following the date on which the request for the stay was made. S.C. 1993, c. 44, s. 218.
- **77.027 Suspension of time periods.**—Where a special committee makes an affirmative finding against Canada or a NAFTA country pursuant to a request made by the government of a NAFTA country or Canada in respect of an allegation referred to in Article 1905.1 of the North American Free Trade Agreement,
 - (a) the time periods provided for in subsection 77.011(4) for requesting a panel review and in subsection 77.017(1) for requesting committee proceedings in respect of goods of that NAFTA country, and
 - (b) the time periods provided in the $Federal\ Court\ Act$, and in section 61 and subsection 96.1(3) of this Act, for appealing, or for requesting judicial review of, any determination, re-determination, decision or order referred to in the definition "definitive decision" in subsection 77.01(1) in respect of goods of that NAFTA country,

shall not run unless and until resumed in accordance with subsection 77.033. S.C. 1993, c. 44, s. 218.

- **77.028** (1) **Suspension of panel process.**—The Minister may suspend the operation of Article 1904 of the North American Free Trade Agreement with respect to goods of a NAFTA country
 - (a) at any time after the expiration of sixty days, but not later than ninety days, following an affirmative finding against the NAFTA country by a special committee requested by Canada under Article 1905.2 of the North American Free Trade Agreement; and
 - (b) at any time where the government of the NAFTA country has suspended the operation of Article 1904 of the North American Free Trade Agreement with respect to goods of Canada following an affirmative finding by a special committee against Canada.
- (2) **Notice of suspension.**—Where the Minister suspends the operation of Article 1904 of the North American Free Trade Agreement under subsection (1) with respect to goods of a NAFTA country, the Canadian Secretary shall forward a written notice of the suspension to the NAFTA country Secretary of that NAFTA country and shall publish a notice of the suspension in the *Canada Gazette*. S.C. 1993, c. 44, s. 218.
- 77.029 (1) Suspension of benefits.—The Governor in Council, on the recommendation of the Minister of Finance and the Minister, may, by order, at any time after the expiration of sixty days, but in no case later than ninety days, following an affirmative finding against a NAFTA country by a special committee requested by Canada under Article 1905.2 of the North American Free Trade Agreement, suspend the application to that NAFTA country of such benefits under the North American Free Trade Agreement as the Governor in Council considers appropriate in the circumstances.
- (2) **Powers.**—For the purpose of suspending the application to a NAFTA country of benefits under subsection (1), the Governor in Council may do any one or more of the following things:
 - (a) suspend rights or privileges granted by Canada to that country or to goods, service providers, suppliers, investors or investments of that country under the North American Free Trade Agreement or an Act of Parliament;

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- (b) modify or suspend the application of any federal law with respect to that country or to goods, service providers, suppliers, investors or investments of that country:
- (c) extend the application of any federal law to that country or to goods, service providers, suppliers, investors or investments of that country; and
- (d) generally take such action as the Governor in Council considers necessary for that purpose.
- (3) **Period of order.**—Unless revoked, an order made under subsection (1) shall have effect for such period as is specified in the order.
- (4) **Definitions.**—In this section, "federal law" means the whole or any portion of any Act of Parliament or regulation, order or other instrument issued, made or established in the exercise of a power conferred by or under an Act of Parliament.
- (5) **Order not** a **statutory instrument.**—An order made under subsection (1) is not a **statutory instrument** for the purposes of the *Statutory Instruments Act*.
- (6) Action consistent with determination.—Whenever, after an order is made under subsection (1), the special committee referred to in that subsection makes a determination pursuant to paragraph 1905.10(a) of the North American Free Trade Agreement, the Governor in Council shall take action consistent with that determination, S.C. 1993, c. 44, s. 218.
- 77.03 Only one section applies.—Where the operation of Article 1904 of the North American Free Trade Agreement is suspended under section 77.028 in respect of a NAFTA country, benefits under Article 1905.2 of the North American Free Trade Agreement may not be suspended under section 77.029 in respect of that NAFTA country, and where benefits under Article 1905.2 of the North American Free Trade Agreement are suspended under section 77.029 in respect of a NAFTA country, the operation of Article 1904 of the North American Free Trade Agreement may not be suspended under section 77.028 in respect of that NAFTA country, S.C. 1993, c. 44, s. 218.
- 77.031 (1) Referral to Federal Court of Appeal. Where the Minister suspends the operation of Article 1904 of the North American Free Trade Agreement under paragraph 77.028(1)(a) and
 - (a) where any panel review is stayed under subsection 77.024(1), the Minister, the government of the NAFTA country, or any party to the stayed panel review may, within thirty days after the date of the suspension, apply to the Federal Court of Appeal for review of the definitive decision that has been the subject of the panel review, on any grounds set out in subsection 18.1(4) of the Federal Court Act; or
 - (b) where any committee proceeding is stayed under subsection 77.024(1), the Minister, the government of the NAFTA country, or any party to the stayed committee proceeding may, within thirty days after the date of the suspension, apply to the Federal Count of Appeal for review of the definitive decision that has been the subject of the original panel decision reviewed by the committee, on any grounds set out in subsection 18.1(4) of the Federal Court Act.
- (2) **Idem.**—Where the government of a NAFTA country suspends the operation of Article 1904 of the North American Free Trade Agreement with respect to goods of Canada under Article 1905.8 of the North American Free Trade Agreement and
 - (a) where any panel review is stayed under section 77.025, the government of the NAFTA country, or persons of that NAFTA country who were party to the stayed panel review may, within thirty days after the date of the suspension, apply to the Federal Court of

Appeal for review of the definitive decision that has been the subject of the panel review, on any grounds set out in subsection 18.1(4) of the *Federal Court Act*; or

- (b) where any committee proceeding is stayed under section 77.025, the government of the NAFTA country, or persons of that NAFTA country who were party to the stayed committee proceeding may, within thirty days after the date of the suspension, apply to the Federal Court of Appeal for review of the definitive decision that has been the subject of the original panel decision reviewed by the committee, on any grounds set out in subsection 18.1(4) of the *Federal Court Act*.
- (3) **Idem.**—For the purposes of subsections (1) and (2), where any application has been made to the Federal Court of Appeal for the review of any definitive decision, that definitive decision may not be subsequently reviewed by a panel or committee if the suspension of Article 1904 is terminated pursuant to section 77.032. S.C. 1993, c. 44, s. 218.
- 77.032 Termination of suspension.—The Minister shall terminate any suspension effected under subsection 77.028(1) if a special committee reconvened pursuant to Article 1905.10 of the North American Free Trade Agreement determines that the problems in respect of which the special committee's affirmative finding was based have been corrected. S.C. 1993, c. 44, s. 218.
- **77.033 Resumption.**—All panel reviews and committee proceedings stayed under subsection 77.024(1) or section 77.025 and any running of the time periods suspended under section 77.027 shall resume
 - (a) where the operation of Article 1904 of the North American Free Trade Agreement is not suspended under paragraph 77.028(1)(a), on the expiration of ninety days after the date on which an affirmative finding was made or on such earlier day as the Minister may specify; or
 - (b) where benefits are suspended under section 77.029. S.C. 1993, c. 44, s. 218.

Offence

- 77.034 (1) Offence.—Every person commits an offence who contravenes or fails to comply with
 - (a) a disclosure undertaking under subsection 77.021(2);
 - (b) the rules respecting the disclosure and use of confidential, personal, business proprietary or other privileged or prescribed information; or
 - (c) a disclosure order or protective order covering personal, business proprietary or other privileged or prescribed information made under the law of any NAFTA country giving effect to the North American Free Trade Agreement.
 - (2) **Punishment.**—Every person who commits an offence under subsection (1)
 - (a) is guilty of an indictable offence and liable to a fine not exceeding one million dollars; or
 - (b) is guilty of an offence punishable on summary conviction and liable to a fine not exceeding one hundred thousand dollars.
- (3) Consent.—No proceedings for an offence under this section shall be instituted without the consent in writing of the Attorney General of Canada, S.C. 1993, c. 44, s. 218.

Regulations

77.035 Regulations.—The Governor in Council may, on the recommendation of the Minister and the Minister of Finance, make regulations

- (a) conferring on a panel, committee or special committee such powers, rights and privileges as the Governor in Council deems necessary for giving effect to Chapter Nineteen of the North American Free Trade Agreement and the rules, including powers, rights and privileges of a superior court of record;
- (b) authorizing a designated officer, or an officer of a designated class of officers, employed in or occupying a position of responsibility in the service of Her Majesty to perform duties or functions of the Minister under this Part;
- (c) for carrying out and giving effect to paragraphs 1 to 4 of Annex 1901.2, and paragraph 1 of Annex 1904.13, of Chapter Nineteen of the North American Free Trade Agreement; and
- (d) generally for carrying out the purposes and provisions of this Part. S.C. 1993, ε , 44, s. 218.

77.036 Publication in *Canada Gazette*.—The rules, the code of conduct established pursuant to Article 1909 of the North American Free Trade Agreement and any amendments made to the rules or code shall be published in the *Canada Gazette*. S.C. 1993, c. 44, s. 218.

Application of Acts

77.037 Application.—No provision

- (a) of an Act to amend this Act,
- (b) of any other Act of Parliament respecting the imposition of anti-dumping or counter vailing duties, or
- (c) amending a provision of an Act of Parliament providing for judicial review of a definitive decision or setting forth the grounds for such a review

that comes into force after the coming into force of this section shall be applied in respect of goods of a NAFTA country, unless it is expressly declared by an Act of Parliament that the provision applies in respect of goods of that NAFTA country, S.C. 1993, c. 44, s. 218.

77.038 Suspension of Part II. The operation of Part II is suspended during the period in which this Part is in force. S.C. 1993, c. 44, s. 218.

PART II

DISPUTE SETTLEMENT RESPECTING GOODS OF THE UNITED STATES

Interpretation

77.1 (1) **Definitions.**—In this Part,

- "American Secretary".—"American Secretary" means the secretary of the United States section of the Secretariat provided for by Article 1909 of the Free Trade Agreement:
- "appropriate authority".—"appropriate authority", in relation to a definitive decision, means either the Deputy Minister or the Tribunal, according to which made the decision:
- "committee".—"committee" means an extraordinary challenge committee appointed pursuant to section 77.18;

- "definitive decision".—"definitive decision" means
 - (a) a final determination of the Deputy Minister under paragraph 41(1)(a),
 - (b) a decision of the Deputy Minister under paragraph 41(1) (b) to cause an investigation to be terminated,
 - (c) an order or finding of the Tribunal under subsection 43(1),
 - (d) a decision of the Deputy Minister under subsection 53(1) to renew or not to renew an undertaking,
 - (e) a re-determination of the Deputy Minister under subsection 59(1),
 - (f) a re-determination of the Deputy Minister under subsection 59(3),
 - (g) an order of the Tribunal under subsection 76(3.1),
 - (h) an order of the Tribunal under subsection 76(4),
 - (i) an order or finding of the Tribunal under subsection 76(4.1) respecting a review pursuant to subsection 76(2.1), or
 - (j) an order or finding of the Tribunal under subsection 91(3) that applies to or in respect of particular goods of the United States, but does not include any such determination, redetermination, decision, order or finding that is made for the purpose of giving effect to a decision of the Federal Court of Canada or the Supreme Court of Canada relating to those goods;
- "Minister".—"Minister" means the Minister for International Trade:
- "panel".—"panel" means a panel appointed pursuant to section 77.13;
- "rules".—"rules" means the rules of procedure, as amended from time to time, made pursuant to Chapter Nineteen of the Free Trade Agreement;
- "Secretariat".—"Secretariat" means the Canadian Secretariat established by section 77.23.
- (2) **Inconsistency.**—In the event of any inconsistency between the provisions of this Part and the provisions of the *Federal Court Act*, the provisions of this Part prevail to the extent of the inconsistency. S.C. 1988, c. 65, s. 42.

Request for Review

- **77.11** (1) **Request for review of definitive decision.**—The Minister or the United States government may request, in accordance with paragraph 4 of Article 1904 of the Free Trade Agreement, that a definitive decision be reviewed by a panel.
- (2) **Idem.**—On a request made to the Canadian Secretary by any person who, but for section 77.12, would be entitled to apply under section 28 of the *Federal Court Act* or section 96.1 of this Act or to appeal under section 61 of this Act in respect of a definitive decision, the Minister shall request, in accordance with paragraph 4 of Article 1904 of the Free Trade Agreement, that the definitive decision be reviewed by a panel.
- (3) **Limitation period.**—No request shall be made to the Canadian Secretary under subsection (2) more than twenty-five days after the day on which notice of the definitive decision is published in the Canada Gazette or, in the case of a re-determination of the Deputy Minister under subsection 59(1) or (3), the day on which notice of the re-determination is received by the United States government.
- (4) **Grounds for request.**—A request by the Minister for the review of a definitive decision may be made only on a ground set forth in subsection 28(1) of the *Federal Court Act*.

- (5) **Notification of request for review.**—On receiving a request under this section made by the Minister, the Canadian Secretary shall notify the American Secretary of the request and the day on which it was received by the Canadian Secretary, and on receiving a request under this section made by the United States government, the Canadian Secretary shall notify the Minister of the request and the day on which it was received by the Canadian Secretary.
- (6) **No application or appeal.**—Where a request is made by the Minister or the United States government for the review of a definitive decision by a panel, no person or government may apply under section 18 or 28 of the *Federal Court Act* or section 96.1 of this Act or appeal under section 61 of this Act in respect of the decision. S.C. 1988, c. 65, s. 42.
- 77.12 (1) Applications and appeals.—No person or government may apply under section 18 or 28 of the *Federal Court Act* or section 96.1 of this Act or appeal under section 61 of this Act in respect of a definitive decision
 - (a) before the expiration of the limitation period established by paragraph 4 of Article 1904 of the Free Trade Agreement for requesting a review of the decision; and
 - (b) unless the person or government has, within twenty days after the day on which that limitation period commences, given notice of the intention to make such an application or appeal in writing to the Canadian Secretary and the American Secretary and in the prescribed manner to any other person who, but for this section, would be entitled to so apply or appeal.
- (2) **Limitation period extended.**—For the purpose of permitting a government or person to apply under section 28 of the *Federal Court Act* or section 96.1 of this Act in respect of a definitive decision after the expiration of the limitation period established by paragraph 4 of Article 1904 of the Free Trade Agreement for requesting a review of the decision, the ten day limitation period referred to in subsection 28(2) of the *Federal Court Act* and subsection 96.1(3) of this Act is extended by thirty days and shall be calculated as commencing on the day on which the limitation period established by that paragraph commences. S.C. 1988, c. 65. s. 42.

Establishment of Panels

- **77.13** (1) **Appointment of panel.**—On a request under section 77.11 for the review of a definitive decision by a panel, a panel shall be appointed for that purpose in accordance with paragraphs 1 to 4 of Annex 1901.2 to Chapter Nineteen of the Free Trade Agreement and any regulations made in connection therewith.
- (2) **Single panel.**—Where a request is made for the review of a final determination of the Deputy Minister under paragraph 41(1)(a) that applies to or in respect of particular goods of the United States and another request is made for the review of an order or finding of the Iribunal under subsection 43(1) that applies to or in respect of those goods, one panel may, with the consent of the Minister and the United States government, be appointed to review the final determination and the order or finding, S.C. 1988, c. 65, s. 42.
- **77.14** Administrative record forwarded.—On the appointment of the members of a panel to review a definitive decision, the appropriate authority shall cause a copy of the administrative record to be forwarded in accordance with the rules, S.C. 1988, c. 65, s. 42.

Review by Panel

77.15 (1) Conduct of review.—A panel shall conduct a review of a definitive decision in accordance with Chapter Nineteen of the Free Trade Agreement and the rules.

- (2) **Powers of panel.**—A panel has such powers, rights and privileges as are conferred on it by the regulations.
- (3) **Disposition after review.**—On completion of the review of a definitive decision, a panel shall determine whether the grounds on which the review was requested have been established and shall make an order confirming the decision or referring the matter back to the appropriate authority for reconsideration within the period specified by the panel.
- (4) **Review of action of appropriate authority.**—A panel may, on its own initiative or on a request made in accordance with the rules, review the action taken by the appropriate authority pursuant to an order under subsection (3) and make a further order as described in that subsection within ninety days after the day on which the Canadian Secretary receives notice of the action.
- (5) **Decision.**—A decision of a panel shall be recorded in writing and shall include the reasons for the decision and any dissenting or concurring opinions of members of the panel, and the Canadian Secretary shall forward, by registered mail, a copy thereof and of the order made pursuant to subsection (3) or (4) to the Minister, the United States government, the appropriate authority and any other person who was heard in the review and shall cause notice of the decision to be published in the *Canada Gazette*. S.C. 1988, c. 65, s. 42.

Action on Decision of Panel

- 77.16 (1) Action by appropriate authority.—Where a panel makes an order under subsection 77.15(3) or (4) referring a matter back to the appropriate authority for reconsideration, the appropriate authority shall, within the period specified by the panel, take action under this Act not inconsistent with the decision of the panel.
- (2) Appropriate authority not required to act twice.—Notwithstanding any other provision of this Act, an appropriate authority is not required to act on an order under subsection 77.15(4), unless it requires the authority to take action that is different from that taken by the authority under the order under subsection 77.15(3). S.C. 1988, c. 65, s. 42.

Extraordinary Challenge Proceeding

- 77.17 (1) Request for extraordinary challenge proceeding.—Within the period after a panel makes an order under subsection 77.15(3) or (4) prescribed by the rules, the Minister or the United States government may request, in writing to the Canadian Secretary, that an extraordinary challenge proceeding be commenced with respect to the order.
- (2) **Ground for request.**—A request for an extraordinary challenge proceeding may be made only on a ground set forth in paragraph 13 of Article 1904 of the Free Trade Agreement.
- (3) Notification of request for extraordinary challenge proceeding.—On receiving a request under this section made by the Minister, the Canadian Secretary shall notify the American Secretary of the request and the day on which it was received by the Canadian Secretary, and on receiving a request under this section made by the United States government, the Canadian Secretary shall notify the Minister of the request and the day on which it was received by the Canadian Secretary. S.C. 1988, c. 65, s. 42.
- 77.18 Appointment of extraordinary challenge committee.—On a request under section 77.17 for an extraordinary challenge proceeding, an extraordinary challenge committee shall be appointed for that purpose in accordance with paragraph 1 of Annex 1904.13 to Chapter Nineteen of the Free Trade Agreement and any regulations made in connection therewith, S.C. 1988, c. 65, s. 42.

- **77.19** (1) **Conduct of extraordinary challenge proceeding.**—A committee shall conduct an extraordinary challenge proceeding and make a decision in accordance with Annex 1904.13 to Chapter Nineteen of the Free Trade Agreement and the rules.
- (2) **Powers of committee.**—A committee has such powers, rights and privileges as are conferred on it by the regulations.
- (3) **New panel.**—Where an order of a panel is set aside by a committee, a new panel shall, in accordance with this Part, be appointed and conduct a review of the definitive decision that was the subject of that order.
- (4) **Action by panel.**—Where an order of a panel is referred back to the panel by a committee, the panel shall take action not inconsistent with the decision of the committee.
- (5) **Decision.**—A decision of a committee shall be recorded in writing and shall include the reasons for the decision and any dissenting or concurring opinions of members of the committee, and the Canadian Secretary shall forward, by registered mail, a copy thereof and of the order made by the committee to the Minister, the United States government, the appropriate authority and any other person who was heard in the proceeding and shall cause notice of the decision to be published in the *Canada Gazette*. S.C. 1988, c. 65, s. 42.
- 77.2 (1) Orders and decisions final.—Subject to subsection 77.15(4) and section 77.17, an order or decision of a panel or committee is final and binding and is not subject to appeal.
- (2) **No review.**—Subject to subsection 77.15(4) and section 77.17, no order, decision or proceeding of a panel or committee made or carried on under, or purporting to be made or carried on under, this Act shall be
 - (a) questioned, reviewed, set aside, removed, prohibited or restrained, or
 - (b) made the subject of any proceedings in, or any process or order of, any court, whether by way of or in the nature of injunction, certiorari, prohibition, quo warranto, declaration or otherwise,

on any ground, including the ground that the order, decision or proceeding is beyond the jurisdiction of the panel or committee to make or carry on or that, in the course of any proceeding, the panel or committee for any reason exceeded or lost jurisdiction.

(3) **No references.**—Subsection 28(4) of the *Federal Court Act* does not apply to a panel or committee. S.C. 1988, c. 65, s. 42.

Members

- 77.21 (1) Code of conduct.—Every member of a panel and every member of a committee shall comply with the code of conduct, as amended from time to time, established pursuant to Article 1910 of the Free Trade Agreement.
- (2) Disclosure undertaking respecting confidential information.—Every member of a panel and every prescribed person shall sign and comply with a disclosure undertaking, in the prescribed form, respecting the disclosure and use of confidential, personal, business proprietary and other privileged information made available to the member or person in proceedings under this Part.
- (3) **Immunity.**—Subject to section 77.26, no action or other proceeding lies or shall be commenced against a member of a panel for or in respect of anything done or omitted to be done, or purported to be done or omitted to be done, under this Part. S.C. 1988, c. 65, s. 42
- 77.22 Remuneration and expenses of panel members.—Every member of a panel shall be paid such remuneration and is entitled to such travel and living expenses incurred in the

performance of the member's duties under this Part as are fixed by the Canada-United States Trade Commission established pursuant to the Free Trade Agreement. S.C. 1988, c. 65, s. 42.

Secretariat

- 77.23 Establishment of Canadian Secretariat.—There is hereby established a secretariat, to be called the Canadian Secretariat, for the purpose of facilitating the implementation of Chapter Nineteen of the Free Trade Agreement and the work of panels and committees. S.C. 1988, c. 65, s. 42.
- 77.24 (1) Secretary.—There shall be a Secretary of the Secretariat to be appointed by the Governor in Council, on the recommendation of the Minister, to hold office for a term not exceeding five years.
- (2) **Salary and expenses.**—The Canadian Secretary shall be paid such salary or other remuneration and expenses as may be fixed by the Governor in Council.
- (3) Absence or incapacity of Secretary.—In the event of the absence or incapacity of the Canadian Secretary or if the office of Canadian Secretary is vacant, the Governor in Council may appoint another person, on such terms and conditions as the Governor in Council deems appropriate, to act as Canadian Secretary and a person so acting shall have all the powers, duties and functions of the Canadian Secretary under this Part and be paid such salary or other remuneration and expenses as may be fixed by the Governor in Council.
- (4) Superannuation.—The provisions of the *Public Service Superannuation Act*, other than those related to tenure of office, apply to the Canadian Secretary, except that a person appointed as Canadian Secretary from outside the Public Service may, by notice in writing given to the President of the Treasury Board not more than sixty days after the date of appointment, elect to participate in the *Diplomatic Service (Special) Superannuation Act*, in which case the provisions of that Act, other than those relating to tenure of office, apply to the Canadian Secretary from the date of appointment and the provisions of the *Public Service Superannuation Act* do not apply.
- (5) Chief executive officer.—The Canadian Secretary is the chief executive officer of the Secretariat and has supervision over and direction of the work and staff of the Secretariat. S.C. 1988, c. 65, s. 42.
- 77.25 Staff.—Such officers, clerks and employees as are required for the proper conduct of the work of the Secretariat shall be appointed in accordance with the *Public Service Employment Act*. S.C. 1988, c. 65, s. 42.

Offence

- $77.26\,(1)\,Offence.$ —Every person commits an offence who contravenes or fails to comply with
 - (a) a disclosure undertaking under subsection 77.21(2);
 - (b) the rules respecting the disclosure and use of confidential, personal, business proprietary or other privileged information; or
 - (c) a protective order covering business proprietary and other privileged information made under the American law giving effect to the Free Trade Agreement.
 - (2) **Punishment.**—Every person who commits an offence under subsection (1)
 - (a) is guilty of an indictable offence and liable to a fine not exceeding one million dollars; or

- (b) is guilty of an offence punishable on summary conviction and liable to a fine not exceeding one hundred thousand dollars.
- (3) Consent.—No proceedings for an offence under this section shall be instituted without the consent in writing of the Attorney General of Canada. S.C. 1988, c. 65, s. 42.

Regulations

- **77.27 Regulations.**—The Governor in Council may, on the recommendation of the Minister and the Minister of Finance, make regulations
 - (a) conferring on a panel or committee such powers, rights and privileges as the Governor in Council deems necessary for giving effect to Chapter Nineteen of the Free Trade Agreement and the rules, including powers, rights and privileges of a superior court of record;
 - (b) authorizing a designated officer, or an officer of a designated class of officers, employed in or occupying a position of responsibility in the service of Her Majesty to perform duties or functions of the Minister under this Part;
 - (c) for carrying out and giving effect to paragraphs 1 to 4 of Annex 1901.2, and paragraph 1 of Annex 1904.13, to Chapter Nineteen of the Free Trade Agreement; and
 - (d) generally for carrying out the purposes and provisions of this Part. S.C. 1988. < 65. s. 42.
- **77.28 Publication in Canada Gazette.**—The rules, the code of conduct established pursuant to Article 1910 of the Free Trade Agreement and any amendments made to the rules of code shall be published in the *Canada Gazette*. S.C. 1988, c. 65, s. 42.

Application of Acts

77.29 Application.—No provision

- (a) of an Act to amend this Act,
- (b) of any other Act of Parliament respecting the imposition of anti-dumping or countervailing duties, or
- (c) amending a provision of an Act of Parliament providing for judicial review of a definitive decision or setting forth the grounds for such a review that comes into force after the coming into force of this section shall be applied in respect of goods of the United States, unless it is expressly declared by an Act of Parliament that the provision applies in respect of goods of the United States. S.C. 1988, c. 65, s. 42.

PART III

GENERAL

Provision of Evidence to Deputy Minister

- 78. (1) Deputy Minister may require evidence to be provided. Where
- (a) in any investigation under this Act respecting the dumping or subsidizing of goods, or
- (b) in relation to the sale of
 - (i) any goods to an importer in Canada, or
 - (ii) any goods located or in the course of production out of Canada,

that are of the same description as goods to which an order or finding of the Tribunal described in section 3, 5 or 6 applies and that will or may be imported into Canada,

the Deputy Minister believes on reasonable grounds that any person in Canada is able to provide evidence relevant to the investigation or to the making, for the purpose of facilitating the administration or enforcement of this Act, of an estimate of the duty that will or may be payable on the goods when imported into Canada, the Deputy Minister may, by notice in writing, require the person to provide the Deputy Minister, under oath or otherwise, with the evidence referred to in the notice.

- (2) **Notice to provide evidence.**—Where, by notice given pursuant to subsection (1), the Deputy Minister requires any person to provide evidence, he shall
 - (a) include in the notice sufficient information for the person to identify the evidence;
 - (b) specify in the notice the time within which and the manner and form in which the evidence is to be provided; and
 - (c) include with the notice a copy or summary of this section and sections 82 to 85.
- (3) **Evidence or statement to be provided.**—Where a person is required by notice given pursuant to subsection (1) to provide the Deputy Minister with evidence, the person shall
 - (a) if it is reasonably practicable for the person to do so, provide the evidence in accordance with the notice;
 - (b) if it is reasonably practicable for the person to provide a part only of the evidence in accordance with the notice,
 - (i) so provide that part of the evidence, and
 - (ii) provide the Deputy Minister with a written statement under oath identifying the remainder of the evidence and specifying the reason why it is not reasonably practicable for the person to provide the remainder of the evidence in accordance with the notice; and
 - (c) if it is not reasonably practicable for the person to provide the evidence in accordance with the notice, provide the Deputy Minister with a statement under oath so stating and specifying the reason why it is not reasonably practicable to so provide the evidence.
- (4) **No oral evidence.**—Nothing in this section shall be construed as authorizing the Deputy Minister to require any person to provide evidence orally.
- (5) **Extension of time.**—Where, pursuant to paragraph (2)(b), the Deputy Minister specifies the time within which evidence is to be provided, the Deputy Minister may, either before or after the expiration of that time, extend the time within which the evidence is to be provided.
- **79.** (1) **Designation of evidence as confidential.**—Where a person who provides the Deputy Minister with evidence pursuant to subsection 78(3) wishes some or all of the evidence to be kept confidential, the person shall submit, at the time the evidence is provided, a statement designating as confidential the evidence that he wishes to be kept confidential, together with an explanation of why he designated that evidence as confidential.
- (2) **Summary or statement to be provided.**—Where, pursuant to subsection (1), a person submits to the Deputy Minister a statement designating evidence as confidential, together with the explanation referred to in that subsection, the person shall submit to the Deputy Minister, at the same time, a summary of the evidence designated as confidential in sufficient detail to convey a reasonable understanding of the evidence.

Collection of Duty

- 80. [Repealed R.S.C. 1985, c. 1 (2nd Supp.), s. 209]
- **81.** (1) **Recovery of duties from person other than importer.** Notwithstanding any thing in this Act, where any duty payable under this Act in respect of goods has not been paid within thirty days after a demand for payment of the duty has been made pursuant to this Act, the Minister may, by notice in writing, require any person in Canada to whom the goods are sold to pay a sum in respect of the duty not exceeding the amount of the duty payable in respect of the goods sold to that person, which sum is, after the notice has been given, a debt due and payable to Her Majesty by that person and may be recovered at any time by action in any court of competent jurisdiction, together with costs of the action.
- (2) **Recourse under** *Customs Act.*—Where an amount that is less than the duty payable in respect of goods imported into Canada is recovered from a person pursuant to subsection (1), such recovery is without prejudice to any recourse available to Her Majesty under the *Customs Act* with respect to the remainder of the duty payable. R.S.C. 1985, c. 1 (2nd Supp.), s. 210.

Disclosure of Information

- **82. Definition of "information".**—In sections 83 to 87, "information" includes evidence.
- **83.** Information to be disclosed.—Where information is provided to the Deputy Minister for the purposes of any proceedings under this Act, every party to the proceedings has, unless the information is information to which subsection 84(1) applies, a right, on request, to examine the information during normal business hours and a right, on payment of the prescribed fee, to be provided with copies of any such information that is in documentary form or that is in any other form in which it may be readily and accurately copied.
- **83.1 Information to be disclosed.**—Where information is provided to the Deputy Minister for the purposes of any proceedings under this Act in respect of goods of a NAFTA country, the Deputy Minister shall, on receipt of a request from the government of that NAFTA country, provide that government with copies of any such information that is requested that is in documentary form or that is in any other form in which it may be readily and accurately copied, unless the information is information to which subsection 84(1) applies. S.C. 1993. c. 44, s. 219.
 - 84. (1) Information not to be disclosed.—Where a person
 - (a) designates information as confidential pursuant to paragraph 85(1)(a), or
 - (b) submits to the Deputy Minister, with respect to evidence, in this section referred to as "information", provided by him pursuant to subsection 78(3), the statement and explanation referred to in subsection 79(1),

and that designation or submission, as the case may be, is not withdrawn by the person, no person employed in the public service of Canada who comes into possession of that information while he is so employed shall, either before or after he ceases to be so employed, knowingly disclose that information, or knowingly allow it to be disclosed, to any other person in any manner that is calculated or likely to make it available for the use of any business competitor or rival of any person to whose business or affairs the information relates.

(2) **Disclosure of summary or statement.** Subsection (1) does not apply in respect of any summary of information or statement referred to in paragraph 85(1)(b) or any summary referred to in subsection 79(2).

- (3) **Disclosure to counsel.**—Notwithstanding subsection (1), information to which that subsection applies that has been provided to the Deputy Minister in any proceedings under this Act may be disclosed by the Deputy Minister to counsel for any party to those proceedings or to other proceedings under this Act arising out of those proceedings for use by that counsel only in those proceedings or other proceedings, subject to such conditions as the Deputy Minister considers are reasonably necessary or desirable to ensure that the information will not, without the written consent of the person who submitted it to the Deputy Minister, be disclosed to any person by counsel in any manner that is calculated or likely to make it available to
 - (a) any party to the proceedings or other proceedings, including a party who is represented by that counsel; or
 - (b) any business competitor or rival of any person to whose business or affairs the information relates.
- (4) **Definition of "counsel".**—In subsection (3), "counsel", in relation to a party to proceedings under this Act, includes any person, other than a director, servant or employee of the party, who acts in the proceedings on behalf of the party. R.S.C. 1985, c. 47 (4th Supp.), s. 52.
- **85.** (1) **Designation of information as confidential.**—Where a person who provides information to the Deputy Minister for the purposes of proceedings under this Act wishes some or all of the information to be kept confidential, the person shall submit, at the time the information is provided,
 - (a) a statement designating as confidential the information that he wishes to be kept confidential, together with an explanation of why he designated that information as confidential; and
 - (b) a summary of the information designated as confidential pursuant to paragraph (a) in sufficient detail to convey a reasonable understanding of the substance of the information or a statement
 - (i) that such a summary cannot be made, or
 - (ii) that such a summary would disclose facts that the person has a proper reason for wishing to keep confidential, together with an explanation that justifies the making of any such statement.
- (2) **Interpretation.**—A person who designates information as confidential pursuant to paragraph (1)(a) fails to comply with paragraph (1) (b) where
 - (a) the person provides neither the summary nor a statement referred to in paragraph (1)(b);
 - (b) the person provides a summary of the information designated as confidential pursuant to paragraph (1)(a), but the Deputy Minister is satisfied that the summary does not comply with paragraph (1)(b);
 - (c) the person provides a statement referred to in paragraph (1)(b), but does not provide an explanation that justifies the making of the statement; or
 - (d) the person provides a statement referred to in paragraph (1)(b), but the Deputy Minister is satisfied that the explanation given as justification for the making of the statement does not justify the making thereof.
- **86.** (1) Where there has been failure to comply.—Where a person has designated information as confidential pursuant to paragraph 85(1)(a) and the Deputy Minister considers that the designation is warranted, but the person has failed to comply with paragraph 85(1)(b),

the Deputy Minister shall cause the person to be informed of that failure, of the ground on which he has so failed and of the application of subsection 87(3) if the person fails to take, within the time limited therefor by or pursuant to that subsection, such action as it is necessary for him to take in order to comply with paragraph 85(1)(b).

- (2) Where Deputy Minister considers designation unwarranted.—Where, pursuant to paragraph 85(1)(a), a person has designated information as confidential and the Deputy Minister considers that, because of its nature, extent, availability from other sources or the failure of the person to provide any explanation of why he designated it as confidential, the designation of that information as confidential is unwarranted, the Deputy Minister shall cause the person
 - (a) to be notified of the fact that the Deputy Minister considers the designation of that information as confidential unwarranted and of the Deputy Minister's reasons for so considering; and
 - (b) where the person has failed to comply with paragraph 85(1) (b), to be informed as provided in subsection (1).
- **87.** (1) **Withdrawal of designation or submission of explanation.**—Where a person is notified pursuant to paragraph 86(2) (a) with respect to any information that he has designated as confidential pursuant to paragraph 85(1)(a), the person may, within fifteen days after being so notified,
 - (a) withdraw the designation, or
 - (b) submit to the Deputy Minister an explanation or further explanation of why he designated the information as confidential,

and where the person does neither of those things within the fifteen days, that information shall not thereafter be taken into account by the Deputy Minister in the proceedings for the purposes of which it was provided or in any proceedings arising out of those proceedings, unless the Deputy Minister obtains it elsewhere than from that person.

- (2) **Deputy Minister to reconsider.**—Where, pursuant to subsection (1), a person submits to the Deputy Minister, within the fifteen days referred to in that subsection, an explanation or further explanation of why the person designated information as confidential, the Deputy Minister shall again consider whether, taking into account that explanation or further explanation, the designation of the information as confidential is warranted and, if the Deputy Minister decides that it is not warranted, shall cause the person to be notified that the information will not thereafter be taken into account by the Deputy Minister in the proceedings for the purposes of which it was provided or in any proceedings arising out of those proceedings, in which case the information shall not thereafter be taken into account by the Deputy Minister in any such proceedings, unless he obtains it elsewhere than from that person.
- (3) Where failure to comply not rectified.—Subject to subsection (4), where a person who has been informed pursuant to section 86 that he has failed to comply with paragraph 85(1)(b) with respect to any information does not, within fifteen days after being so informed or within such longer time not exceeding thirty days after being so informed as the Deputy Minister, either before or after the expiration of the fifteen days, in his discretion allows, take such action as it is necessary for the person to take in order to comply with paragraph 85(1)(b), the Deputy Minister shall cause the person to be notified that the information will not thereafter be taken into account by the Deputy Minister in the proceedings for the purposes of which it was provided or in any proceedings arising out of those proceedings, in which case the information shall not thereafter be taken into account by the Deputy Minister in any such proceedings, unless he obtains it elsewhere than from that person.

- (4) Exception.—Subsection (3) does not apply in respect of any information that the Deputy Minister is prohibited by subsection (1) or (2) from taking into account in the proceedings for the purposes of which it was provided. 1984, c. 25, s. 87.
- **88. Application of sections 86 and 87.**—Sections 86 and 87 do not apply in respect of evidence submitted to the Deputy Minister pursuant to subsection 78(3).

Ruling on Who is Importer

- 89. (1) Request for ruling on who is importer in Canada.—Where a question arises or is raised as to which of two or more persons is, for the purposes of this Act, the importer in Canada of goods imported or to be imported into Canada on which duty is payable or has been paid or will be payable if the goods are imported, the Deputy Minister may, and at the request of any person interested in the importation of the goods shall, request the Tribunal for a ruling on that question, unless, in the case only of goods that have been imported into Canada,
 - (a) a determination has been made pursuant to section 55 or subsection 56(1) with respect to the goods; and
 - (b) more than ninety days have elapsed since the determination referred to in paragraph
 - (a) was made.
- (2) **Idem.**—Where the Deputy Minister makes a request under subsection (1) for a ruling on the question referred to therein, the Deputy Minister shall
 - (a) state in the request which of the two or more persons the Deputy Minister believes is the importer in Canada of the goods;
 - (b) if any of the goods is of the same description as the goods specified in a preliminary determination made in an investigation that was initiated pursuant to section 31 and is still continuing, so state in the request;
 - (c) provide the Tribunal with such information as the Deputy Minister considers will be useful to it in considering the question and with such other information as the Tribunal may request; and
 - (d) give notice of his request to such persons as the rules of the Tribunal require or as the Tribunal may require.
- (3) **Investigation deemed to continue.**—Where, in any investigation, the Deputy Minister makes a final determination of dumping or subsidizing under subsection 41(1) in respect of any goods, the investigation shall, for the purpose of paragraph (2)(b), be deemed to continue until such time as the Tribunal makes an order or finding in respect of the goods. 1984, c. 25, s. 89.
- **90. Tribunal's ruling.**—Where a request is made to the Tribunal under subsection 89(1) for a ruling on the question referred to therein, the Tribunal
 - (a) shall arrive at its ruling on the question by determining which of the two or more persons is the importer in Canada of the goods;
 - (b) subject to paragraph (c), shall give its ruling on the question forthwith after receiving the request therefor; and
 - (c) shall not, if a statement pursuant to paragraph 89(2)(b) is made in the request, give its ruling on the question until after it makes an order or finding in the inquiry commenced as a consequence of the receipt by the Secretary of notice of the preliminary determination referred to in that paragraph, unless, after the request is made to the Tribunal, the Secretary receives notice pursuant to subsection 41(4) that the investigation has been

terminated pursuant to subsection 41(1) in respect of the goods specified in the preliminary determination, in which case the Tribunal shall give its ruling on the question forthwith after the Secretary receives that notice.

91. (1) Rules.—Where

- (a) a request is made to the Tribunal pursuant to subsection 89(1) for a ruling on the question referred to therein,
- (b) a statement pursuant to paragraph 89(2)(b) is made in the request, and
- (c) the Tribunal's ruling on the question is that the importer in Canada of the goods is a person other than the person specified as such by the Deputy Minister pursuant to paragraph 89(2)(a),

the following rules apply:

- (d) as soon as possible after the Tribunal gives its ruling on the question, the Deputy Minister shall
 - (i) reconsider any final determination of dumping or subsidizing made pursuant to subsection 41(1) with respect to the goods specified in the preliminary determination and shall confirm the final determination, rescind it or make amendments to it. as is appropriate in the circumstances, and
 - (ii) cause notice of the action taken by the Deputy Minister pursuant to subparagraph
 - (i) to be given to prescribed persons and governments, published in the Canada Gazette and filed with the Secretary in writing;
- (e) where the Deputy Minister rescinds a final determination pursuant to paragraph (d), section 41 shall again apply in respect of the goods to which the final determination applied as if that section had not previously applied in respect of those goods, except that the action that the Deputy Minister is required by that section to take shall, notwithstanding anything therein, be taken by the Deputy Minister within sixty days after the Tribunal gives its ruling on the question;
- (f) where the Deputy Minister has caused the investigation referred to in paragraph 89(2)(b) to be terminated pursuant to subsection 41(1) with respect to the goods specified in the preliminary determination, the Tribunal shall be deemed to have directed the Deputy Minister, by notice in writing pursuant to section 46, to cause an investigation to be initiated respecting the dumping or subsidizing of those goods and the Deputy Minister shall, pursuant to subsection 31(2), forthwith cause such an investigation to be commenced; and
- (g) the Tribunal may, on its own initiative or at the request of the Deputy Minister or any person interested but subject to subsection (2), reconsider, under the authority of this paragraph, any order or finding made by it in the inquiry referred to in paragraph 90%, and, in so reconsidering, may re-hear any matter before deciding it.
- (2) **Limitation on reconsideration of order or finding.** The Tribunal shall not commence reconsideration of an order or finding under the authority of paragraph (lag)
 - (a) later than ninety days after the making of the ruling on the question reterred to in paragraph (1)(a); or
 - (b) at the request of any person unless that person satisfies the Tribunal that reconsideration of the order or finding is warranted.
- (3) Completion of reconsideration. Where the Tribunal reconsiders an order of finding under the authority of paragraph (1)(g),

- (a) the Tribunal shall complete the reconsideration forthwith and, in any event, not later than ninety days after the day on which it decides to commence it and, on completion thereof, shall confirm the order or finding or rescind it and make such other order or finding with respect to the goods to which the order or finding under reconsideration applies as the nature of the matter may require, and, where it makes another order or finding, shall declare to what goods, including, where applicable, from what supplier and from what country of export, the order or finding applies;
- (b) the Secretary shall forward by registered mail to the Deputy Minister, the importer, the exporter and such other persons and governments as may be specified by the rules of the Tribunal
 - (i) forthwith after the reconsideration is completed, notice of the action taken pursuant to paragraph (a) with respect to the order or finding and, where another order or finding has been made pursuant to that paragraph, a copy of that other order or finding, and
 - (ii) not later than fifteen days after the completion of the reconsideration, a copy of the reasons for the action taken thereon; and
- (c) where the Tribunal makes another order or finding pursuant to paragraph (a), the Secretary shall cause notice of the order or finding to be published in the Canada Gazette.
- (4) **Separate order or finding.**—Where a reconsideration under the authority of paragraph (1)(g) involves goods of the United States as well as goods of other countries and the Tribunal makes another order or finding under paragraph (3)(a), the Tribunal shall make a separate order or finding under that paragraph with respect to the goods of the United States. S.C. 1988, c. 65, s. 43.
- **92. Determination pursuant to section 55.**—A determination made pursuant to section 55 in respect of any imported goods on the basis that the importer of the goods was a person who is subsequently ruled by the Tribunal not to have been the importer thereof shall be deemed not to have been made and, for the purpose of that section, the date of the order or finding of the Tribunal with respect to goods that appear to be of the same description as the imported goods shall be deemed to be
 - (a) where, following its ruling, the Tribunal reconsiders the order or finding pursuant to paragraph 91(1)(g) and confirms it, the date on which the Tribunal confirms the order or finding;
 - (b) where, following its ruling, the Tribunal reconsiders the order or finding pursuant to paragraph 91(1)(g) and rescinds it and makes another order or finding with respect to goods of that description, the date of the other order or finding; and (c) in any other case, the date of the Tribunal's ruling.
- **93.** Determination pursuant to section 56, 57 or 59.—A determination or re-determination made pursuant to section 56, 57 or 59 in respect of any goods on the basis that the importer of the goods was a person who is subsequently ruled by the Tribunal not to have been the importer thereof shall be deemed not to have been made and the goods shall, for the purposes of section 56, be deemed to be accounted for on the earlier of
 - (a) the day that is sixty days after the day on which the Tribunal made the ruling; and
 - (b) the day on which a new determination is made pursuant to section 56 in respect of the goods. R.S.C. 1985, c. 1 (2nd Supp.), s. 211.
- **94.** Ruling binding.—A ruling given by the Tribunal on the question of who is the importer in Canada of any goods imported or to be imported into Canada is binding on the

Deputy Minister, and on every person employed by the Department of National Revenue in the administration or enforcement of this Act, with respect to the particular goods in relation to which the ruling is given, unless the Tribunal is fraudulently misled or, in the case only of goods to be imported into Canada, material facts that are not available to the Deputy Minister at the time the Tribunal gives its ruling come to the Deputy Minister's attention after it is given.

95. Deputy Minister to provide name of importer.—Where any person interested in the importation of goods into Canada requests the Deputy Minister to provide the person with the name of the importer of the goods, the Deputy Minister shall, except in prescribed circumstances, forthwith provide the person with the name of the importer, 1984, c. 25, s. 95.

Gathering of Information

96. Deputy Minister may gather information in advance. In order to facilitate the administration and enforcement of this Act, where the Deputy Minister believes that goods sold to an importer in Canada or goods located or in the course of production out of Canada are or may be of the same description as goods to which an order or finding of the Tribunal described in section 3, 5 or 6 applies and that they will or may be imported into Canada, the Deputy Minister may, for the purpose of estimating the margin of dumping of or the amount of the subsidy on the goods before they are imported into Canada, seek from persons in or out of Canada, in such manner and form as he considers appropriate in the circumstances, such information as he believes will be useful for that purpose.

Application for Review

- **96.1** (1) **Application for judicial review.**—Subject to section 77.012 or 77.12, an application may be made to the Federal Court of Appeal to review and set aside
 - (a) a final determination of the Deputy Minister under paragraph 41(1)(a):
 - (b) a decision of the Deputy Minister under paragraph 41(1)(b) to cause an investigation to be terminated;
 - (c) a decision of the Deputy Minister under subsection 53(1) to renew or not to renew an undertaking;
 - (d) an order of the Tribunal under subsection 76(3.1);
 - (e) an order of the Tribunal under subsection 76(4);
 - (f) an order or finding of the Tribunal under subsection 56(4.1) respecting a review pursuant to subsection 76(2.1); or (g) an order or finding of the Tribunal under subsection 91(3).
- (2) **Grounds of application.** An application may be made under this section on the ground that the Deputy Minister or the Tribunal, as the case may be.
 - (a) acted without jurisdiction, acted beyond the jurisdiction of the Deputy Minister or the Tribunal or refused to exercise that jurisdiction;
 - (b) failed to observe a principle of natural justice, procedural fairness or other procedure that the Deputy Minister or the Tribunal was required by law to observe;
 - (c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;
 - (d) based a decision or order on an erroneous finding of fact that the Deputy Minister or

the Tribunal made in a perverse or capricious manner or without regard for the material before the Deputy Minister or the Tribunal;

- (e) acted, or failed to act, by reason of fraud or perjured evidence; or
- (f) acted in any other way that was contrary to law.
- (3) **Filing of application.**—Subject to subsection 77.012(2), an application may be made under this section by any person directly affected by the determination, decision, order or finding by filing a notice of the application in the Federal Court of Appeal within thirty days after the time the determination, decision, order or finding was first communicated to that person by the Deputy Minister or the Tribunal, or within such further time as the Federal Court of Appeal or a judge thereof may, before or after the expiration of those thirty days, fix or allow.
- (4) **Trial Division deprived of jurisdiction.**—Where the Federal Court of Appeal has jurisdiction under this section to hear and determine an application to review and set aside a determination, decision, order or finding, the Trial Division has no jurisdiction to entertain any proceeding in respect of that determination, decision, order or finding.
- (5) **Hearing in summary way.**—An application under this section shall be heard and determined without delay and in a summary way.
- (6) **Disposition.**—On an application under this section, the Federal Court of Appeal may dismiss the application, set aside the final determination, decision, order or finding, or set aside the final determination, decision, order or finding and refer the matter back to the Deputy Minister or the Tribunal, as the case may be, for determination in accordance with such directions as it considers appropriate. S.C. 1988, c. 65, s. 44; S.C. 1993, c. 44, s. 220.
- **96.11** (1) **No references.**—Subsection 18.3(1) of the *Federal Court Act* does not apply to the Deputy Minister or the Tribunal in respect of proceedings under this Act relating to goods of a NAFTA country.
- (2) **Suspension of s. 96.2.**—The operation of section 96.2 is suspended during the period in which subsection (1) is in force. S.C. 1993, c. 44, s. 221.
- **96.2** No references.—Subsection 18.3(1) of the *Federal Court Act* does not apply to the Deputy Minister or the Tribunal in respect of proceedings under this Act relating to goods of the United States. S.C. 1988, c. 65, s. 44; S.C. 1990, c. 8, s. 73.
- **96.21** (1) **Request for review of final determination.**—The Minister for International Trade may, in the manner provided for by the law of a NAFTA country giving effect to the North American Free Trade Agreement, request that a final determination be reviewed by a panel established under that law.
- (2) **Idem.**—Any person who, but for the law of a NAFTA country giving effect to the North American Free Trade Agreement, would be entitled under the law of that NAFTA country to commence domestic proceedings for judicial review of a final determination may file with the Canadian Secretary a request that the final determination be reviewed by a panel established under that law.
- (3) **Deeming.**—A request under subsection (2) shall be deemed to be a request by the Minister for binational review within the meaning of paragraph 4 of Article 1904 of the North American Free Trade Agreement.
- (4) **Limitation period.**—A request under subsection (1) or (2) may only be made within thirty days after the day on which notice of the final determination is published in the official publication of the NAFTA country, or, in the case of a final determination of which notice is not

so published, within thirty days after the day on which notice of the final determination is received by the Minister.

- (5) **Definition of "final determination"**.—In this section, "final determination" means a final determination as defined in Annex 1911 of the North American Free Trade Agreement.
- (6) **Suspension of s. 96.3.**—The operation of section 96.3 is suspended during the period in which this section is in force. S.C. 1993, c. 44, s. 222.
- **96.3** (1) **Request for review of final determination.** The Minister for International Trade may, in the manner provided for by the American law giving effect to the Free Trade Agreement, request that a final determination be reviewed by a panel established under that law.
- (2) **Idem.**—On a request made to the Canadian Secretary by any person who, but for the American law giving effect to the Free Trade Agreement, would be entitled under American law to commence domestic proceedings for judicial review of a final determination, the Minister for International Trade shall, in the manner provided for by the American law giving effect to the Free Trade Agreement, request that the final determination be reviewed by a panel established under that law.
- (3) **Limitation period.**—No request shall be made to the Canadian Secretary under subsection (2) more than twenty-five days after the day on which notice of the final determination is published in the Federal Register or, in the case of a final determination of which notice is not so published, the day on which notice of the final determination is received by the Minister.
- (4) **Definition of "final determination".**—In this section, "final determination" means a final determination as defined in subparagraph (b) of the definition of that term in Article 1911 of the Free Trade Agreement. S.C. 1988, c. 65, s. 44.

REGULATIONS

- **97.** (1) **Regulations.**—The Governor in Council may, on the recommendation of the Minister of Finance, make regulations
 - (a) prescribing anything that by this Act is to be or may be prescribed by regulation.
 - (b) specifying the circumstances and manner in which
 - (i) two or more dumping investigations,
 - (ii) two or more subsidy investigations, or
 - (iii) one or more dumping investigations and one or more subsidy investigations.

may be joined and carried on as one and the persons to whom and the manner in which notice of the joining shall be given;

- (c) defining the expression "agricultural product" for the purpose of the definition "material injury" in subsection 2(1);
- (d) defining the expression "duty or internal tax" for the purpose of the definition "subsidy" in subsection 2(1);
- (e) defining the expressions "cost of production", "an amount for administrative, selling and all other costs" and "an amount for profits" for the purpose of paragraph 19ths of subparagraph 20(c)(ii);
- (f) defining the expression "an amount for profit" for the purpose of subparagraph 25(c)(ii) or 25(d)(i);

- (g) defining the expression "person interested" for the purpose of subsection 45(2) or section 89 or 95:
- (g.1) deeming a government in Canada or the United States to be a person who is entitled to make a request to the Canadian Secretary under subsection 77.11(2);
- (g.11) deeming a government in Canada or in a NAFTA country to be a person who is entitled to make a request to the Canadian Secretary under subsection 77.011(2);
- (g.2) defining the expression "goods of the United States" for the purpose of this Act;
- (g.21) defining the expression "goods of a NAFTA country" for the purpose of this Act;
- (g.22) determining, in respect of each NAFTA country, which publication shall be deemed to be the official publication of that country for the purpose of this Act;
- (h) prescribing the procedure to be followed in an investigation ordered by the Governor in Council under subsection 7(1);
- (i) providing for the selection of an interest rate, from among or by reference to interest rates prevailing in or out of Canada at the time of the sale referred to in subsection 21(1), by reference to which the determination referred to in paragraph 21(1)(a) shall be made in the circumstances described in clause 21(1)(a)(ii)(B);
- (j) providing for the selection of an interest rate, from among or by reference to interest rates prevailing in or out of Canada at the time of the sale referred to in subsection 27(1), by reference to which the determination referred to in paragraph 27(1)(a) shall be made in the circumstances described in clause 27(1)(a)(ii)(B);
- (k) providing for the determination of or specifying the date as of which the equivalent dollar value of any amount that is expressed in the currency of a country other than Canada and that is used or taken into account for any purpose in the administration or enforcement of this Act shall be ascertained, determined or calculated; and
- (1) generally, for carrying out the purposes and provisions of this Act.
- (2) **Regulations prescribing rate of interest.**—The Governor in Council may, on the recommendation of the Minister of Finance, make regulations prescribing a rate of interest or rules for determining a rate of interest for the purposes of this Act. R.S.C. 1985, c. 1 (2nd Supp.), s. 212; S.C. 1988, c. 65, s. 45; S.C. 1993, c. 44, s. 223.

All references are to section numbers and schedules of statutes and regulations, not page numbers.

The following abbreviations are used to refer to statutes in this Index:

CA Customs Act, R.S.C. 1985, c. 1 (2nd Supp.), as amended.

CEOAA Customs and Excise Offshore Application Act, R.S.C. 1985, c. C-53, as

amended.

CPEIA Cultural Property Export and Import Act, R.S.C. 1985, c. C-51, as amended.

CT Customs Tariff, R.S.C. 1985, c. 41 (3rd Supp.), as amended.

ETA Excise Tax Act, R.S.C. 1985, c. E-15, as amended.

EA Export Act, R.S.C. 1985, c. E-18

EIPA Export and Import Permits Act, R.S.C. 1985, c. E-19, as amended.

IILA Importation of Intoxicating Liquors Act, R.S.C. 1985, c. 27 (1st Supp.) as

amended.

SOR/86-793

SOR/86-794

SOR/86-951

SOR/86-952

MIA Meat Import Act, R.S.C. 1985, c. M-3, as amended.

SIMA Special Import Measures Act, R.S.C. 1985, c. S-15, as amended.

Save and except for the Re-Determination and Re-Appraisal of Goods Regulations. C.R.C. 1978, c. 474, as amended, reference to the various *Customs Act* regulations is by their respective regulatory citations. Reference to the former is by the abbreviation "RDRAG", with the references to the latter being as follows:

Joint Canada-United States Projects Drawback Regulations, as amended

Determination of the Tariff Classification of Sugar, Molasses and Sugar

Canadian Textile Goods Exported Drawback Regulations, as amended

Canadian Commercial Corporation Goods Exported Drawback

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SOR/86-795	Goods Imported and Exported Drawback Regulations, as amended.
SOR/86-796	Goods for Ships and Aircraft Drawback Regulations, as amended.
SOR/86-870	Presentation of Persons (Customs) Regulations, as amended.
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SOR/86-944	Agents' Accounting for Imported Goods and Payment of Duties
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SOR/86-991	Storage of Goods Regulations, as amended.
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SOR/86-1001	Reporting of Exported Goods Regulations, as amended.
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SOR/86-1012	Special Services (Customs) Regulations, as amended.
SOR/86-1028	Fees for Documents Regulations.
SOR/86-1062	Accounting for Imported Goods and Payment of Duties Regulations, as amended.
SOR/86-1063	Customs Bonded Warehouses Regulations, as amended.
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SOR/86-1121	Interest Rate for Customs Purposes Regulations, as amended.
SOR/87-333	Coasting Trade (Customs) Regulations.
SOR/93-556	Exporters' and Producers' Records Regulations.
SOR/93-607	Proof of Origin of Imported Goods Regulations

Please note that although this Index refers to provisions dealing with the *Canada-United States Free Trade Agreement*, these provisions have been generally suspended during the operation of those provisions dealing with the *North American Free Trade Agreement*.

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